

# Partnerships in Transportation Workshops

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AECOM CONSULT

PARSONS  
BRINCKERHOFF

## PARTNERSHIPS IN TRANSPORTATION WORKSHOPS – FINAL REPORT

### ABSTRACT

The U.S. Department of Transportation defines “public-private partnership” as “a contractual agreement formed between public and private sector partners, which allows more private sector participation than is traditional. The agreements usually involve a government agency contracting with a private company to renovate, construct, operate, maintain, and/or manage a facility or system. While the public sector usually retains ownership in the facility or system, the private party will be given additional decision rights in determining how the project or task will be completed.”\*

During 2003 and 2004 the Federal Highway Administration (FHWA), in cooperation with the Office of the Secretary of Transportation, sponsored a series of workshops on the topic of public-private partnerships (PPPs) and their applicability to the nation’s highway development program. The PPP workshops were designed to educate transportation decision-makers in state and local legislatures and transportation agencies about PPPs and their potential to help leverage scarce public resources to address urgent transportation facility needs. An initial mini-workshop was held in Washington, D.C. as part of the 15<sup>th</sup> anniversary celebration of the redevelopment of Union Station as one of the nation’s premier public-private partnerships. This was followed by six PPP workshops in Washington/Oregon, Minnesota, Texas, Florida, California, and North Carolina.

The PPP workshops proved to be an effective forum for highlighting the success stories and challenges associated with implementing PPPs in state and local transportation programs. Although states selected to host workshops were chosen based on their past or present receptiveness to PPPs and a base familiarity with the concept within the state transportation agency, there was a wide variance in issues and experiences among these states. Sessions were tailored to fit the needs of each host state, with a greater focus on the attributes of enabling legislation and how to implement a PPP program in states just getting started and an emphasis on building a successful PPP program in states further along in the process.

Based on workshop presentations, panel dialogues, and roundtable discussions, this report outlines the many lessons learned from the workshops, with an emphasis on the elements of a successful PPP project from both public and private perspectives, impediments to PPPs in surface transportation programs, and strategies for overcoming these impediments. The report also summarizes the status of PPP programs within each of the states that hosted a PPP workshop. The report concludes by discussing the impacts that the PPP workshops have had on host agencies, next steps to further promote PPPs, and available resources for sponsors of PPPs and others who are interested in developing and implementing PPP programs and projects.

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\* *Report to Congress on Public-Private Partnerships*. United States Department of Transportation, Federal Highway Administration, December 2004.

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## I. INTRODUCTION

### BACKGROUND

Interest in public-private partnerships (PPPs) in transportation has been growing in recent years, fueled by a confluence of issues. The escalating costs of highway system preservation, the ever increasing need to improve the performance of transportation infrastructure, the slowing growth of fuel taxes and other traditional highway revenue sources, and the downsizing within state transportation agencies has led to efforts by the Federal Highway Administration (FHWA) and state transportation agencies to unleash the financial capacity and ingenuity of the private sector to help address these challenges. Public-private partnerships offer the potential to accelerate highway development, improve the cost-effectiveness of project and service delivery, better preserve highway infrastructure, and ultimately provide additional resources to rehabilitate and expand highway facilities to meet the expanding surface transportation needs of the nation.

Several state transportation agencies have moved forward with aggressive plans to advance PPPs, while others are approaching the concept cautiously: Some have tested only pilot projects, and many states do not yet have the legislative or institutional authority to engage in PPPs.

In an effort to educate transportation decision-makers about PPPs, FHWA, in cooperation with the Office of the Secretary of Transportation, sponsored a series of workshops in 2003 and 2004. An initial mini-workshop was held in Washington, D.C. as part of the 15<sup>th</sup> anniversary celebration of Union Station's rebirth through a highly successful PPP. Following the initial mini-workshop, six workshops were held in Washington/Oregon, Minnesota, Texas, Florida, California, and North Carolina. The objectives of these workshops were to:

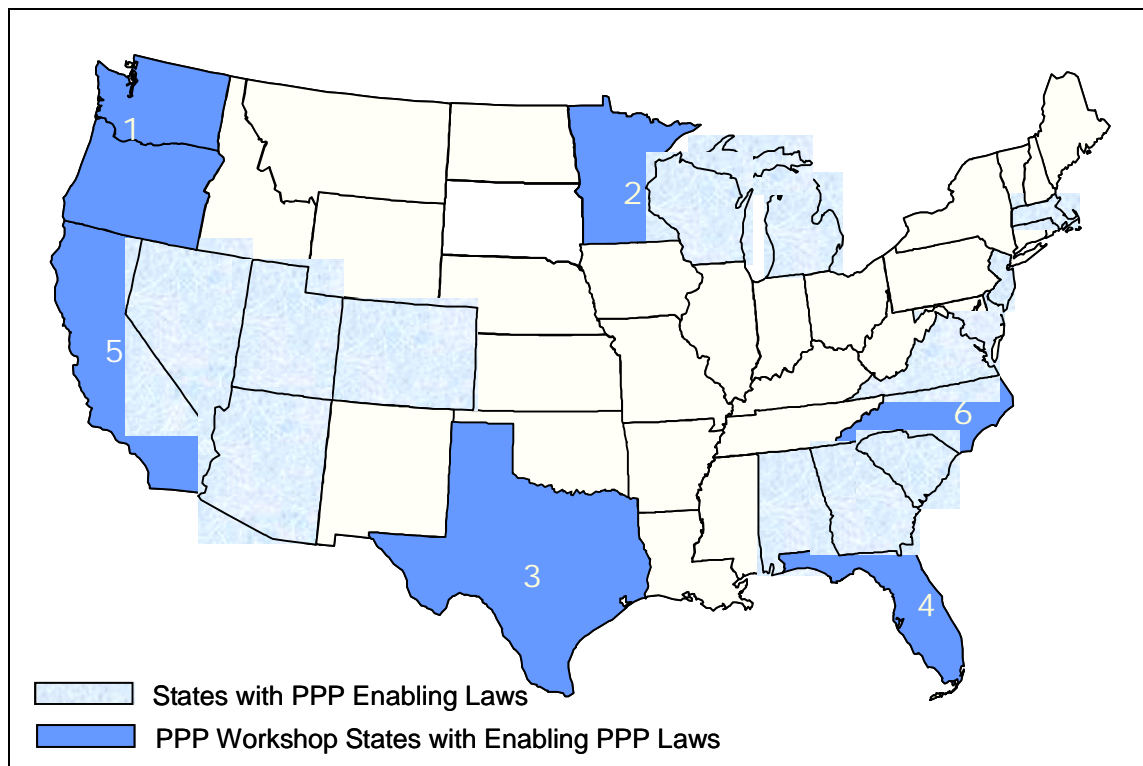
- Help those in state and local governments responsible for transportation legislation and programs to better understand how PPPs can expand their options for addressing constituents' transportation needs, despite limited public resources;
- Familiarize public and private participants with each sector's perspectives on PPP programs, with a special focus on each party's criteria for deciding whether and how to enter into PPPs; and
- Convey FHWA's support for this approach for leveraging constrained public resources to expand, accelerate, and improve the delivery of needed transportation infrastructure and services.

Workshop agendas included sessions on:

- The fundamentals of PPPs;
- Federal, state, and local perspectives;
- Private sector perspectives;
- Experience and applications; and
- Roundtable discussions on conceptualizing and defining the project (getting started), structuring the deal, and implementing the partnership.

Figure 1 shows the states where PPP workshops were held, and states with PPP enabling laws.

**FIGURE 1. PPP WORKSHOP STATES AND STATES WITH PPP ENABLING LAWS**



The workshops proved to be an effective forum for highlighting the success stories and challenges associated with implementing PPPs in state surface transportation programs. Although states selected to host workshops were chosen based on their past or present receptiveness to PPPs and a base familiarity with the concept within the state transportation agency, there was a wide variance in issues and experiences among these states, as discussed in Section 2 of this report. Through the active participation of each state's DOT representatives, sessions were tailored to fit the needs of each host state, with a greater focus on the attributes of enabling legislation and how to implement a PPP program in states just getting started and an emphasis on building a successful PPP program in states further along in the process.

## PURPOSE AND OBJECTIVES OF REPORT

This report outlines the many lessons learned from the six workshops, with an emphasis on the elements of a successful PPP project from both public and private perspectives, impediments to PPPs in surface transportation programs, and strategies for overcoming these impediments. The objectives of this report are multifold:

- To summarize the status of PPPs in each workshop host state, including the institutional context, the types of PPPs and projects used or considered by each state, and similarities and differences among the workshop states;
- To describe the key requirements and project features for successful PPPs from the perspectives of public and private sector sponsors;

- To identify the major impediments to PPPs from the perspective of public and private sector sponsors, including the major areas where impediments predominate and illustrative examples from workshop host agencies;
- To outline effective strategies used to overcome impediments to PPPs in surface transportation programs;
- To characterize the impact of the PPP workshops within the host states; and
- To identify next steps for promoting PPPs among surface transportation agencies at both state and local levels of government and private firms interested in participating in the capital improvement and other programs of these agencies.

The content of the report is informed by several sources, including presentation materials and summaries from each of the Partnerships in Transportation workshops, notes from the many participant roundtable discussions held at each workshop, a survey of officials at each of the workshop host agencies conducted in February 2005, and relevant webpages and literature on PPPs, as appropriate.

## **DEFINITION OF PPPs**

As described in the recent U. S. Department of Transportation report to Congress on Public-Private Partnerships, PPPs are defined as follows:

“A public-private partnership is a contractual agreement formed between public and private sector partners, which allows more private sector participation than is traditional. The agreements usually involve a government agency contracting with a private company to renovate, construct, operate, maintain, and/or manage a facility or system. While the public sector usually retains ownership in the facility or system, the private party will be given additional decision rights in determining how the project or task will be completed.”<sup>1</sup>

## **REPORT OVERVIEW**

Using the experiences of the host states as a foundation, this report summarizes the status of PPPs within each state, discusses the key requirements and project features of successful PPPs, reviews the major impediments to PPPs, and suggests strategies to overcome these impediments based on lessons learned from the workshop presenters and participants. The report concludes by discussing the impacts that the PPP workshops have had on host agencies and next steps to further promote PPPs. Appendix A provides a summary and copy of the agenda for each workshop. Appendix B describes FHWA’s resources for sponsors of PPPs and others who are interested in developing and implementing PPP programs and projects to expand and expedite their surface transportation programs. This includes the recently launched FHWA PPP Webpage, which provides access to information on a broad array of transportation PPPs and links to other sites that offer related information.

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<sup>1</sup> *Report to Congress on Public-Private Partnerships*. United States Department of Transportation, Federal Highway Administration, December 2004.

## II. STATUS OF PPP PROGRAMS IN WORKSHOP HOST STATES

This chapter summarizes the status of public-private partnership in the surface transportation programs in each of the states that hosted PPP workshops. In each case, various PPP program attributes are highlighted that served as the basis for conducting a workshop in each location. The result is a characterization of each state's PPP program relative to the key elements for making PPPs possible, not a performance rating or ranking which would otherwise be counterproductive to the promotional intent of the workshops and this report.

### PPP PROGRAM STATUS BY HOST STATE

Each state summary includes the following sub-sections:

- ***Legislative and Regulatory Environment:*** reviews the statutes, regulations, and procedures in place that define the legal basis and regulatory process for developing and managing PPPs for delivering transportation projects.
- ***Institutional Context:*** discusses the prevailing attitude among state and local agency personnel, political leadership, and the private sector toward development of PPPs, as well as how public agencies are equipped to manage their PPP programs and projects.
- ***Representative Projects:*** provides examples of previous or current surface transportation PPPs in each state and PPP projects envisioned in the foreseeable future.

The states are listed in the order in which the workshops were conducted.

#### State of Washington

##### *Hosted by Washington State Department of Transportation (WSDOT)*

WSDOT jointly hosted the first Partnerships in Transportation workshop with the Oregon DOT on November 19, 2003 in Vancouver, Washington, across the Columbia River from Portland, Oregon. WSDOT's PPP program is characterized as being in a holding position, with legal authority and significant interest by both public and private sector stakeholders in Washington State's surface transportation program, but a cautious attitude towards changing the status quo regarding how projects are financed, contracted, and delivered and legislative impediments to PPP project development.

***Legislative and Regulatory Environment:*** Washington State was one of the first states in the nation to enact enabling legislation for PPPs in 1993, with passage of the Public-Private Initiatives in Transportation Act. Washington Revised Code sections 47.46.010 to 47.46.900 authorized up to six PPP demonstration projects. However, the act was subsequently amended to require a public advisory referendum on any proposed PPP project. This amendment was prompted by concerns over the prospects of highway facilities in Washington State being tolled as an eligible funding mechanism for PPP projects, as provided under the original version of the legislation.

Although only advisory in nature, the public referendum process provided an additional hurdle to the approval process for PPP projects. This made the legislation unusable, particularly for the



private sector, due to the added financial risks of spending significant resources to develop PPP projects, only to have the projects withdrawn because of the results of a public advisory referendum held late in the development process. As a result, only one of the six PPP demonstration projects initially selected (the Tacoma Narrows Bridge project) survived, and even this project was ultimately scaled back to a design-build project. Currently the State Legislature is discussing how to address this situation, but no concrete proposals have been put forth as of yet.

***Institutional Context:*** There is a diversity of attitudes towards PPPs within all levels of government in Washington State, including elected officials and WSDOT. While there is strong support for PPPs within each segment, there are also skeptics who express countering opinions. This diversity of views within the leadership ranks of the Department is also reflected among line managers.

The mixed view of PPPs within WSDOT is illustrated by several comments made during the roundtable portion of the workshop when project engineers clearly expressed hesitation about the use of PPPs. This is due in part to limited experience and understanding of the process for developing this type of project and concerns over losing control over the projects and their outcomes. Simultaneously, others expressed a clearer understanding of the potential of PPPs and were eager to gain additional information about best practices for developing and implementing them. With their limited exposure to PPPs, WSDOT staff participants want a greater understanding of how to develop and manage PPPs before totally embracing the concept.

This divergence of opinions and levels of experience in the public sector and the previous repeal of key legislation that favored aspects of PPPs has also led the private sector to be more cautious in its dealings with the state with respect to PPP initiatives. However, as expressed by private sector participants in the workshop, the private sector maintains an open view towards the possibilities that PPPs will emerge to play a significant role in WSDOT's surface transportation program in the future.

During this initial workshop, public sector participants expressed a strong desire for more information regarding the private sector's objectives for entering into partnership arrangements with public sector agencies and their criteria for judging whether to pursue PPPs for either solicited or unsolicited projects. This was an area of significant interest at each of the workshops, particularly for public sector participants whose perspectives and motivations were typically far different than their private sector counterparts.

***Representative Examples of Projects:*** The Tacoma Narrows Bridge is a project frequently cited by WSDOT executives as the state's example of a PPP, but in reality the project has evolved from a full PPP to a design-build project as a result of changes in the state's PPP legislation, as noted above.

## **State of Oregon**

### ***Hosted by Oregon Department of Transportation (ODOT)***

ODOT co-hosted the first Partnerships in Transportation workshop with WSDOT on November 19, 2003 in Vancouver, Washington. ODOT's PPP program is characterized as emerging, with recent legislative authority and an active effort to develop the regulations and procedures to

launch the program in 2005. As a result, there is now significant interest by both public and private sector stakeholders in using the emerging PPP program to advance Oregon's highway and bridge development and improvement programs.

***Legislative and Regulatory Environment:*** Enabling legislation was passed in 2003, drawing on the Virginia Public-Private Transportation Act (PPTA) as a framework. Oregon Revised Statute sections 383.001 and 383.017 allow ODOT to award PPPs for toll highway projects through an Innovative Partnership Program. The act allows both solicited and unsolicited proposals.

***Institutional Context:*** The leadership of ODOT has led efforts to gain full statutory authority and implement appropriate regulations to permit PPPs for highway and bridge development and improvement projects. This is illustrated by the issuance of a Request for Information during July of 2003, followed by a series of sessions with consultants and lawyers to help develop procedures for implementing ODOT's PPP program, entitled the Innovative Partnership Program (IPP). By the end of 2004, ODOT had selected a management team to help the Department administer the program. At the time of the Partnerships in Transportation workshop, ODOT's IPP project development process was still in its infancy, and Departmental staff were becoming familiar with the developing program and its prospects for the future, although they were not yet fully familiar with the options and benefits of PPPs.

The private sector is eagerly watching Oregon as its IPP process develops to determine the extent to which the Department will embrace PPPs for its capital improvement program, the pre-requisites for participating in the program, and the perceived risks of involvement in a PPP versus the traditional project delivery approaches. During 2005, the Department expects to be ready to receive and process both solicited and unsolicited proposals for PPP projects.

***Representative Examples of Projects:*** No PPP projects have been developed or implemented in the state as of yet. However, there are several projects under active consideration or in the early stages of development, including a bridge over the Columbia River along I-5 between Oregon and Washington and numerous other interstate bridge improvement projects. Requests for Qualifications (RFQs) have been circulated by the Department.

## **State of Minnesota**

### ***Hosted by Minnesota Department of Transportation (MnDOT)***

MnDOT hosted the second Partnerships in Transportation workshop on December 8, 2003 in the City of Minneapolis. MnDOT's PPP program is characterized as being in a holding position, with legal authority and program initiatives balanced by constitutional and other impediments to PPP project development. With one of the state's congressional representatives sponsoring federal legislation to permit the construction of High Occupancy Tolloed lanes (so-called HOT Lanes) on Interstate and other parts of the national highway system, there is significant interest by both the public and private sectors in how such projects might impact the state's highway program and how PPPs could be used to develop such projects. However, there remains a cautious attitude towards the prospects for PPP projects due to constitutional impediments to successful conclusion of PPP development projects, particularly if they require toll-based financing.

***Legislative and Regulatory Environment:*** The State of Minnesota was another early adopter of legislation permitting the use of PPPs for developing and delivering highway projects. In 1993, the Minnesota Legislature passed the Infrastructure Partnership Act. Minnesota Statute Ann. sections 160.84 to 160.93 authorize public or private toll facilities developed through partnership arrangements. However, when first applying this new capability, MnDOT encountered a problem when a local jurisdiction was able to veto the first proposed toll project in the state near the end of the development process under a provision in the state constitution. This provision allows local municipalities to veto proposed tolled projects that would transit their jurisdiction up to the point of contract letting, if they conclude that the project might place their community at a disadvantage. The State Legislature, led by the Governor, recently moved to amend the legislation to correct this problem. A subsequent amendment to the legislation was passed in late 2003, giving MnDOT full authority to implement HOT Lanes. However, the effect of this amendment on the state constitutional provision cited above has yet to be tested in the courts.

***Institutional Context:*** MnDOT leadership and much of its staff are supportive of the use of PPPs, as is most of the political leadership, including the congressional representative who actively promoted holding the workshop in the state as a showcase for his HOT Lanes legislative initiative. This environment has generated significant support within the agency staff for the concept of PPPs, but because of their limited experience there is still a need to develop some of the project development and management skills needed for a successful PPP program.

The private sector has been active in the state with a number of design-build projects (see “Projects” below), creating a reasonable “comfort level” among private sector participants. However, the late termination of the initial tolled PPP project has made the private sector reluctant to enter into PPPs in Minnesota. The Governor’s focus on the state’s transportation needs, the push for capacity expansion and use of tolling to raise needed revenues, and legislative relief from the veto power of local jurisdictions over tolled projects are combining to improve the chances for PPPs in the State. However, past experience has made many in the private sector unsure of the risks of pursuing PPPs in Minnesota until the courts have been heard on the issue of local veto power and whether the state will allow non-compete clauses for toll facilities built through a PPP.

***Representative Examples of Projects:*** While there are no PPP projects in Minnesota, there have been a number of design-build projects which include the Hiawatha Light Rail, ROC 52 Highway, and reconstruction of portions of I-494. The state is also proceeding with design-build for several trunk highways, including TH 10/32, TH 212, and TH 52. In addition, in May 2005 the state will open its first toll project, the I-394 MnPASS Lanes, a conversion of existing high occupancy vehicle (HOV) lanes to high occupancy toll (HOT) lanes.

## **State of Texas**

### ***Hosted by Texas Department of Transportation (TxDOT) and Texas Turnpike Authority (TTA)***

TxDOT co-hosted the third Partnerships in Transportation workshop with the Texas Turnpike Authority on December 16, 2003 in Austin. The state’s PPP program is being implemented by TxDOT, TTA (a part of TxDOT), and a number of Regional Mobility Authorities all of which have a number of major highway projects underway and/or proposed involving PPPs. The Texas PPP program is characterized as robust and rapidly expanding, with broad legislative authority

and an active effort to advance projects through the application of PPPs. As a result, there is strong interest by both public and private sector stakeholders in using PPPs to advance Texas' highway development and improvement programs at the state, regional, and local levels.

***Legislative and Regulatory Environment:*** In 2003 the Texas State Legislature passed several bills that amended preexisting statutes to enable the implementation of the Trans-Texas Corridors or TTC plan. Texas Transportation Code Ann. chapters 227 and 370 allow TxDOT, the Texas Turnpike Authority, and Regional Mobility Authorities to accept solicited and unsolicited proposals for PPPs. This series of bills is generally referred to as HB 3588, the primary bill in the legislative package. The creation of Regional Mobility Authorities is a significant contribution to the development of PPPs within Texas. These entities can function independently of TxDOT in the development and execution of transportation PPPs, thereby significantly decentralizing the transportation project planning and delivery processes.

***Institutional Context:*** Texas likes to do things in a big way, as evidenced by its Trans-Texas Corridors initiative. The senior leadership of TxDOT has long supported this program, which aggressively incorporates the use of PPPs and toll financing to expedite large-scale projects. TTA staff is already using these innovative approaches to move projects to contract and completion in a timely manner. TxDOT staff are beginning to understand the challenges and opportunities associated with entering into PPPs for highway and bridge project development, and the different ways in which these capabilities can be applied to suit particular projects.

TxDOT leadership took a unique step by creating a special office for the development and management of PPPs, particularly related to the TTC. This program was the creation of the current Governor. While initially treated with some skepticism due to the sheer size of the proposed TTC program, Texas has proven to be one of the most active states in the area of PPPs for highway transportation project development. In addition, there is wide use of exclusive development agreements (akin to design-build) to deliver transportation projects in the state.

In addition to the PPPs developed by TxDOT and TTA, the creation of Regional Mobility Authorities (RMAs) has allowed local governments to develop transportation PPPs on their own. As result, some projects in the Houston-Harris County area have been executed as a PPP without the direct involvement of the state transportation agency. RMAs across the state have numerous projects in development, with some already underway.

These factors combine to make the private sector enthusiastic about the potential for business in the state and the use of PPPs to accomplish needed projects. This environment is very attractive to the private sector, including large-scale international firms, national companies, and those based solely within the state. However, the magnitude of some of the projects in the state's TTC program does limit the ability of smaller companies to participate in certain proposed projects to the degree they have been accustomed to.

As with most large-scale undertakings, there are various challenges to the TTC initiative that will need to be taken into consideration by members of public-private partnerships pursuing TTC projects. These include public opposition to tolls and local, grass-roots objections to the large tracts of land required for the proposed multi-modal corridors. Since many of these tracts are currently privately owned, there are concerns about the reduction in local property taxes resulting

from the public taking of these tracts and the potential reduction in access to property remaining after portions of existing parcels are acquired for the corridors.

***Representative Examples of Projects:*** TTC 35 is one of the largest transportation projects in the U.S., an 800-mile corridor that would include roadways, rail, and a dedicated utility zone stretching from Oklahoma to Mexico. A private company has been selected by TxDOT as the overall program manager for the enormous projects which will require the use of multiple contracts for full implementation.

The Central Texas Turnpike is a new \$43 billion, 122-mile toll facility near Austin, consisting of four interconnected highway elements. One element, SH 45, has already been awarded as a PPP, financed with bonds issued by the Texas Transportation Commission and a TIFIA loan. Another element is SH-130, a \$1.4 billion, 91-mile limited access toll highway outside of Austin, under development as part of an exclusive development agreement to design, build and maintain the facility that will open to traffic in late 2007. Each of these projects is being administered by the TTA.

### **State of Florida**

***Hosted by Florida Department of Transportation (FDOT) and Florida's Turnpike Enterprise (FTE)***

FDOT co-hosted the fourth Partnerships in Transportation workshop with FTE on October 6, 2004 at the Turnpike Enterprise's Headquarters near Orlando. The state's PPP program is being implemented by FDOT, FTE (a subsidiary of FDOT), and several autonomous local expressway authorities. Each of these entities has a number of major projects underway and proposed involving PPPs. In addition, PPPs are used to administer and deliver various programs and functions, especially at the Turnpike Enterprise. The Florida PPP program is characterized as broad-based, mature, and rapidly expanding, with broad legislative authority and an active effort to deliver programs and projects through the application of PPPs. As a result, there is strong interest by both public and private sector stakeholders in using PPPs to advance Florida's highway development and improvement programs at the state and local levels.

***Legislative and Regulatory Environment:*** Several legislative packages authorize FDOT, Florida's Turnpike Enterprise, and local expressway authorities in Miami, Orlando, and Tampa to engage in PPPs to delivery programs and projects. Florida Statute Ann. section 334.30 allows solicited and unsolicited PPP proposals to FDOT, with project-specific legislative approval required. Florida Statute Ann. Section 348.0004 enables the state's expressway authorities to consider unsolicited proposals from private entities.

In addition, legislation enacted in 2002 (H.B. 0261) turned FDOT's Turnpike District into Florida's Turnpike Enterprise, enabling it to operate in a more business-like manner and maximize its financial leveraging capability. The bill exempted FTE from FDOT policies, procedures, and standards, subject to the discretion of the FDOT Secretary of Transportation. In addition, FTE can develop its own rules to enable the Turnpike Enterprise to use best business practices in management, finance, organization, and operations to improve cost-effectiveness and timeliness of project delivery, increase revenues, expand the Turnpike system's capital program capability; and improve the quality of service to its patrons. The statute allows greater use of design-build contracting by FTE and enables the Turnpike Enterprise to expand commercial

business opportunities along the Turnpike, which expands the potential application of PPPs beyond project development and delivery.

***Institutional Context:*** FDOT and its subsidiary the Florida Turnpike Enterprise are aggressively utilizing PPPs in a wide range of programs and projects. These agencies apply not only the more traditional type of PPPs for project development and management, but also extensive competitive sourcing of various agency programs and functions. Equally important, there is significant political leadership (including the Governor, Legislature, and Florida Transportation Commission) in support of the agencies' PPP programs and projects.

This has created a positive attitude among staff that is highly supportive of PPPs. Because of the number of programs and projects that have and are being provided through PPPs, agency management has become experienced in the management of PPP projects, which has opened up new and innovative applications for PPPs. Some of the PPP projects have had strong economic development aspects, leading to significant involvement by non-transportation private sector partners such as the Walt Disney Company and Universal Studios.

The Turnpike Enterprise and the local expressway authorities are financially supported primarily by tolls. Indeed, Florida's tolled highways and bridges represent one of the largest tolled systems in the nation. With tolling an accepted and expanding source of dedicated funding for the state's highway system, Florida provides one of the most fertile financial environments to support PPPs for highway programs and projects.

Equally important, there is a strong local government infrastructure familiar with the use of PPPs, although the experience level is still relatively new and developing.

With a rapidly expanding economy and growing financial resources to pay for highway system expansion and preservation, Florida's institutional environment is very attractive to the private sector, including large-scale international firms, national companies, and those based solely within the state.

***Representative Examples of Projects:*** The Conroy Road bridge and interchange (the Orlando City Gateway on Interstate 4) is a \$28 million project financed through a combination of special assessment district fees, property tax incremental financing (TIF), a land proffer, and a state grant. This performance-based partnership, involving the City of Orlando, FDOT, and local developers, accelerated delivery of the project by 10 to 15 years. The ensuing development increased local property values from \$6.5 million to \$250 million in only five years, generating more in incremental property taxes than the annual debt service costs for the project.

The Republic Road interchange, also along I-4 in Orlando, is a \$48 million project financed with a TIFIA loan, special assessment district fees, and transportation impact fees, as part of an agreement between the City of Orlando and Universal Studios. Incremental property taxes on development that is enabled by the project are used as off-sets for the special assessment and transportation impact fees. In only four years, this project has resulted in an increase of local property values from \$350 million to \$1.1 billion, generating revenues from incremental property taxes that are twice the annual debt service costs for the project.

The Southern Connector Extension is a \$153 million, 6-mile limited access toll facility opened in 1996 near Orlando that is a PPP between the Florida Turnpike Enterprise, the Orlando-Orange County Expressway Authority, and adjacent landowners, including the Walt Disney World Resort.

Florida has had experience with a number of design-build projects as well, including the Palm Beach to Ft. Lauderdale Tri-Rail commuter rail project; the U.S. Route 1 Key West development; I-4 bridge over the St. John's River; and the Hathaway Bridge near Panama City, a FDOT design-build project with a warranty.

## **State of California**

### ***Hosted by California Department of Transportation (Caltrans)***

Caltrans hosted the fifth Partnerships in Transportation workshop on October 20, 2004 in Sacramento. Caltrans' PPP program is characterized as pre-emergent, with limited legal authority and significant institutional inertia that impede efforts to actively pursue PPPs. What prompted the selection of California as a PPP workshop location is the state's financial crisis and new state leadership willing to consider alternative and innovative approaches to improve the cost-effectiveness of the state's transportation programs and begin to address the large backlog of transportation needs that lack funding. The crisis environment may provide the impetus to move California's transportation stakeholders in both the public and private sectors to implement such innovative approaches as PPPs to close the gap between the state's financial resources and its transportation infrastructure needs and preserve California's ability to compete in both the national and global economies.

While there is significant interest in PPPs by private sector stakeholders in California's highway development community, there is also uncertainty regarding the state's ability to confront the legal and institutional impediments to their broader use by Caltrans. More optimistic are local elected officials and highway agency representatives, and the private sector organizations that serve them, regarding the prospects of using PPPs to address local highway program and project needs.

***Legislative and Regulatory Environment:*** In one of the first legislative initiatives for PPPs in transportation, the California legislature enacted AB 680 in 1989 establishing four pilot PPP projects, but did not allow the application of state or federal funds to the projects—all funding was required from private sources (with tolls as the principal source of revenue for the projects). Of four projects, only two (SR-91 and SR-125) were developed, while the others failed for lack of financial and community support. In 2002, the legislation was repealed.

Currently there is no clear statutory authority in the state for PPPs, but the legislative and regulatory environment does allow for substantial local initiatives. AB 2660 allows for unsolicited proposals for local or MPO projects, and to develop user fees and charges. However, this statute has been used only for water/wastewater projects and not for transportation projects because the legislation prohibits the application to state financed or toll highways. There has been discussion of amending this statute to enable its application to transportation projects.

***Institutional Context:*** The geographic size of California offers ample opportunity for a range of views and reactions. While the Governor, his administration, and some of the leadership at

Caltrans are supportive of PPPs, most agency personnel appear skeptical that the institutional inertia that prevented consideration of PPPs in the past will suddenly disappear. In addition, there is opposition to PPPs by public sector labor unions in the belief that PPPs will lead to a reduction in state employment.

In contrast to the situation at Caltrans, a number of the Metropolitan Planning Organizations (MPOs) in the state have demonstrated strong support for the use of PPPs for transportation projects, particularly in Southern California. Independent of Caltrans, numerous transportation infrastructure projects in and around the Southern California area have been developed with extensive private sector support. In fact, most of the California case studies that have been used as national models have been sponsored by regional and local transportation agencies.

***Representative Examples of Projects:*** The Alameda Corridor is a \$2.5 billion, 20-mile freight rail expressway between the neighboring ports of Los Angeles and Long Beach and the transcontinental rail yards and railroad mainlines near downtown Los Angeles. This is a multi-modal PPP mega-project funded through a unique blend of public and private sources that opened on time and on budget in 2002. Most of the funding for the project will ultimately come from fees (tolls) paid by the railroad companies operating premium-service, intermodal trains through the corridor, based on the volume of rail traffic using the facility.

The SR-125 Toll Road is a \$635 million, 9.5 mile highway alignment planned to connect the only commercial port of entry in San Diego to the regional freeway network, a 35-year franchise awarded in 1991 under California's AB 680 to be constructed as a privately financed and operated toll road, which will open in 2006 after years of delay.

Some examples of design-build projects include the San Joaquin Hills Toll Road; the Eastern Toll Road; SR-22 improvements; and SR-125 South and Connectors.

## **State of North Carolina**

### ***Hosted by North Carolina Department of Transportation (NCDOT)***

NCDOT hosted the sixth Partnerships in Transportation workshop on December 15, 2004 in Durham, North Carolina. NCDOT's PPP program is characterized as emerging, with on-going efforts by Department leadership to introduce innovative approaches to project delivery and recent creation of the North Carolina Turnpike Authority (NCTA). With a receptive and encouraging Department leadership, there is now significant interest by both public and private sector stakeholders in using PPPs to advance North Carolina's highway and bridge development and improvement programs, particularly related to facilities to be financed with tolls.

***Legislative and Regulatory Environment:*** While there is no current statutory authority for the use of PPPs in the state's transportation program, the political environment appears encouraging. North Carolina General Statutes sections 136-89.180 to 136-89.197 authorize the NCTA to construct up to three toll facilities in the state, and authorizes one purely private toll franchise demonstration project. The NCTA is also authorized to study, plan, develop and prepare preliminary designs for three additional toll roads that will require legislative approval to build them. The General Assembly created the NCTA in 2002 and the agency is looking for refinements in its charter to allow for more use of PPPs, in part following the model of Florida's Turnpike Enterprise.



***Institutional Context:*** NCDOT personnel, at all levels, are very supportive of the use of PPPs, and many state legislators are equally in favor of this approach. However, the issue of enabling legislation has become a political issue and has yet to be resolved.

Equally important is the establishment of the North Carolina Turnpike Authority. While the agency is still in the process of getting organized, its establishment portends a supportive atmosphere for financing projects through means other than general revenues, fuel taxes, and vehicle registration/license fees. The state has prospects for several PPP projects and is eager to move ahead with them once enabling legislation is finally passed.

The private sector is open and receptive to working with the state to initiate PPP projects, as soon as specific proposals and procedures can be developed for their consideration.

***Representative Examples of Projects:*** There have been no major PPP projects sponsored by NCDOT other than developer contributions to the construction of an interchange near Durham. However, a transit component of an economic development project in Charlotte will include elements of PPPs. The state has some experience with design-build, including the U.S. 64 Knightdale Bypass.

## SIMILARITIES AND DIFFERENCES BETWEEN HOST STATES

Figure 2 illustrates the relative status of the PPP programs for each of the host states relative to eight key dimensions, based in part on the information presented above.

**FIGURE 2. STATUS OF PPP PROGRAMS BY WORKSHOP STATE**

Dimension	WA	OR	MN	TX	FL	CA	NC
Statutory authority	§	¢	§	¢	¢	§	§
Regulatory process	©	¢	©	¢	¢	§	§
Institutional context	§	©	©	¢	¢	§	©
Political leadership	§	¢	¢	¢	¢	©	©
Agency leadership	§	¢	¢	¢	¢	§	©
Staff capabilities	©	©	©	¢	¢	§	©
Program maturity	§	§	§	©	¢	§	§
Defined funding sources	§	©	©	¢	¢	§	§

<b>Key:</b>	<b>Preliminary</b>	<b>Developing</b>	<b>Advanced</b>
	§	©	¢

## Comparison of State PPP Programs

The following compares the PPP programs in the host states according to several of the dimensions noted in Figure 2.

***Statutory and Regulatory Authority:*** There is no consistency in this category, which one would expect as states tailor legislation to meet their individual needs and perspectives. While the Virginia statute, the Public Private Transportation Act of 1995, is generally viewed as a highly flexible model for encouraging and developing PPPs, each of the workshop host states has taken a different approach to pursuing PPPs because of differences in procurement statutes, the ability to fund and finance PPPs, the capability of staff resources to develop and implement PPPs, and diverse political environments. This demonstrates that there is not one answer to the question of how to implement PPPs, but rather a diversity of equally viable approaches.

***Political Leadership:*** This varies substantially from state to state, with several states (Minnesota, Florida, Texas, and California) seeing their governors at the leading edge of promoting PPPs (though there is wide discrepancy even among these states regarding the ability of political leadership to overcome either political or institutional inertia). Within the state legislatures there is less than a unified body of opinion on the issue of PPPs for transportation projects, especially where public employee unions are particularly strong. In some instances, this has resulted in a reversal of statutory authority (as in California and Washington states). This will continue to be a major challenge for promotion of PPPs, requiring more aggressive education programs for the political institutions about the values and appropriate uses of PPPs.

***Agency Leadership:*** In all of but one of the host states (Washington State), the agency leadership strongly supports the concept of PPPs for transportation projects. The challenge often remains to take this senior-level support from concept to action. However, agency leadership support does not necessarily mean that this approach to project development is supported by other levels within the same agency. Opposition by mid-level agency managers and staff can undermine leadership initiative to promote innovative approaches to project development, such as PPPs. This may be due to uncertainty or caution by mid-level staff, or perhaps lack of clear leadership direction. This may also be attributed to institutional inertia, which is most prevalent where agency bureaucracy remains strong (California).

***Staff Capabilities:*** Personnel capabilities for development and management of PPP projects vary substantially within and among the host state transportation agencies, with good experience and capabilities seen in Florida and Texas, and varying degrees elsewhere. Capabilities are directly proportionate to the number of projects completed or underway in each state. However, in all states there is a substantial core of agency personnel genuinely interested in acquiring the proper skills necessary for effective and prudent use of PPPs to leverage scarce agency resources.

***Program Maturity:*** At this date, there are still a limited number of projects to use as illustrations of how to implement PPPs, especially when compared to the potential need and opportunities. As budget pressures continue, more states (i.e. political leaders in particular) will likely move in the direction of more extensive use of PPPs, particularly as the experiences of other states become better understood. What is holding back greater use of PPPs in highway programs is not a lack of eligible projects but uncertainty regarding how to go about developing

and implementing PPPs; how much responsibility, risk, and reward each member of the partnership should be allowed to take on; and how to overcome the institutional inertia that causes many to resist innovative approaches despite the inability to meet even critical needs due to a lack of traditional funding or inefficiency in the traditional ways of structuring and implementing projects.

### **Summary of State PPP Program Comparison**

Both Florida and Texas have significant PPP programs and resources to support them. Oregon's program is just beginning, but the major ingredients for success are in place. Minnesota is proceeding with several design-build and toll projects but has constitutional challenges to resolve before a full-scale PPP program can be developed. North Carolina has limited statutory authority and resources in place to move aggressively into PPPs, but their agency leaders provide strong institutional support. Washington State has the potential to pursue PPPs in a more aggressive manner but needs to obtain clear legislative authority and stronger agency support to move forward. California has the most to gain from PPPs and the greatest challenges to implement a PPP program. The current administration is highly supportive, but there remains strong institutional inertia and a lack of resources constrain efforts to develop and implement a PPP program at the state level. In the short term, local agencies are in the best position to apply PPPs in their transportation program.

### III. KEY REQUIREMENTS AND PROJECT FEATURES FOR SUCCESSFUL PPPs

Among the most valuable information shared at each of the Partnerships in Transportation workshops pertains to the key requirements and project features of successful PPPs. These prerequisites and project attributes have evolved as a result of the many infrastructure projects attempted to date in the areas of transportation, water/wastewater, and commercial development. They reflect the common ingredients to those infrastructure projects that have been successfully delivered as public-private partnerships across the country.

In defining the prerequisites and project attributes for successful PPP projects in the transportation (highway) arena, it is important to understand the different perspectives of the two key members of the partnership, namely the public sector project owner or sponsor and the private sector project developer (which can include design, construction, finance, operation, or preservation). The different perspectives and strategic objectives of these two groups must be recognized and accommodated in structuring a PPP project to ensure its success. Both members of the partnership must be able to achieve their strategic objectives and satisfy their minimum requirements to have a successful PPP project, and both members must perceive that a proposed PPP project has the potential to meet these different needs to attract their interest to begin with.

The public and private sectors bring different prospective strengths to an infrastructure project. These are noted below:

- Private sector strengths include management and workplace efficiencies, ability to apply emerging technology, cash flow management skills, personnel development capacities, and shared resources—which *may* include equity funding for PPPs;
- Public sector strengths include legal authority, procurement policy protections, ability to balance competing goals to meet public needs, dedicated but constrained personnel, and capital resources and underutilized assets.

This chapter outlines elements for successful PPP projects from both public and private sector perspectives, as expressed by workshop panelists, presenters, and participants. Prospective sponsors of PPP projects need to understand and account for the success criteria from both groups to ensure commitment by all members of the partnership and an appropriate distribution of project responsibilities, risk, and reward among the partners.

#### PPPS SUCCESS CRITERIA FOR PUBLIC SECTOR SPONSORS

Public sector criteria for a successful PPP project include the following:

- ***Evidence of a political champion for the project*** – an individual or individuals with sufficient political stature to assure continued pressure in support of developing the project.
- ***Alignment with state or agency statutes, policies, and regulations*** – regarding public-private partnerships, procurement, finance, environmental impacts, mitigation, and other areas as applicable. As a first step, any statutory impediments to or restrictions of PPPs in contract law, procurement regulations, and agency procedures should be addressed to facilitate the formation and execution of PPPs.

- ***A project that serves the public interest*** – addressing specific public needs such as improving transportation accessibility and mobility, encouraging economic development, or improving the environment. Transportation improvements could include development of new or reliever facilities, making better use of existing facilities, improving safety, or otherwise improving freight and/or passenger mobility. Any project’s net benefits (including both quantitative and qualitative benefits) should be greater than the base-case to which it is compared.
- ***A genuine and pressing public need for a project*** – having broad public support facilitates the development of PPPs. Public agencies generally avoid projects that are controversial or have strong opposition from the general public. This has derailed numerous proposed PPP projects, such as when the funding mechanism (such as tolling or taxes) or the community/environmental impacts of a project are opposed by the general public.
- ***A financially feasible project*** – having sufficient funding identified to pay for the project, including revenue sources and a financing plan. Before proceeding with a PPP, public sector officials should know how a project will be funded, whether financing will be required, and what the relative financial obligations of public and private sector partners will be.
- ***One or more improvements to standard project delivery***, including:
  - ***Freed capital for other projects*** – as a result of mixing public and private funds, applying direct user charges such as tolling, tapping other new revenue streams, or other ways to leverage existing resources of project sponsors;
  - ***Reduction in comparative capital, maintenance, and/or operations expenditures*** – as a result of the speed, innovation, flexibility, and efficiency of the private sector;
  - ***Earlier completion or faster construction*** – resulting from the use of creative financing, design, or construction techniques that speed project delivery and place a facility in service years or decades ahead of schedule;
  - ***Improved achievement of project goals*** – due to the application of private sector ingenuity that introduces a new design, method, or technology. PPP programs should be designed to encourage the creativity and resourcefulness of the private sector in bringing innovation, flexibility, and efficiency to infrastructure projects. An outcome-oriented, performance-based specification will yield greater innovation than a more prescriptive approach.
- ***Assurance that private sector partners will fulfill their obligations*** – to adequately deliver their end of the partnership. This will require proactive contract negotiation and due diligence during project delivery on the part of the public sector to ensure protection of the public interest.
- ***A detailed business plan*** – in terms of an enforceable contract that is performance-goals oriented to allow for innovation. The contract or plan should include specific milestones and goals, reporting metrics and frequency, and dispute resolution procedures.

When each of these elements is present, public sector agencies will likely achieve a successful PPP.

## PPP SUCCESS CRITERIA FOR PRIVATE SECTOR SPONSORS

Private sector criteria for a successful PPP include the following:

- ***A reasonable rate of return on investment*** – which is the primary yardstick the private sector uses to evaluate a PPP project. The motivation for the private sector to get involved in a PPP to deliver a project for a public sector sponsor is profit, and without the potential for a reasonable return on their investment, prospective private sector sponsors will lose interest in a project. Agreements between public and private sector sponsors should include methods to determine the applicable costs and returns from a project, and their relative distribution between private and public sector partners. In addition, the private sector will seek agreement on how toll rates, user fees, or other revenues will be determined and distributed, as project revenues will impact the return on investment. Any private sector equity in a project should have a reasonably higher return on investment than revenue bonds or subordinated debt in exchange for the assumed risk.
- ***Manageable and shared risks*** – that mitigate as much as possible potential political, real estate, environmental, permitting, and timing risks. Private sector partners want as much certainty as possible going into a PPP, and will avoid engagements in which unmitigated risk could derail the project. The distribution of responsibilities and risks should match participant strengths and investment in the development process. Private sector participants will look to public sector partners to manage those risks that are best left to the public sector, such as right-of-way acquisition and environmental assessment. Furthermore, partners will seek assurance that the ground rules governing the partnership will not change due to changes in the political landscape, as has happened in some states following changes in administration.
- ***A publicly supported project that has a genuine and pressing need*** – as with the public sector, private partners will avoid projects that are controversial or have strong opposition from the general public.
- ***Stakeholder support*** – from all groups with interest in the project, including public sector employees, private sector parties, labor unions, end users, and competing interests. Political, public, and agency support should span the project life cycle. This requires open and frank discussion between all stakeholders that promotes understanding, reduces uncertainty, dispels distrust, and results in a transparent project development process. This can be a challenge because the private sector and public sector have different strategic objectives and focus on different performance criteria. For example, businesses focus on “customer satisfaction,” “return on investment,” and “risk/reward evaluation,” while public agencies focus on “responsibility,” “accountability,” and “risk avoidance.”
- ***Statutory permission*** – whereby enabling legislation and a regulatory framework and timeline for PPPs must be in place, especially if unsolicited proposals are sought. Governing statutes and policies must be current and flexible to reflect market conditions—especially in regards to bonding and risk requirements if applicable to a project.
- ***Political leadership*** – from the public sector that demonstrates a solid partnership philosophy. Political support should match a project’s characteristics, especially for large

or controversial projects; efforts involving new taxes, tolls, or fees or redistribution of existing revenues; and projects with checkered histories.

- ***A public sector project management structure committed to PPPs*** – with a trained and dedicated corps of personnel to promote and monitor the implementation of PPPs on the agency’s behalf that understands how to let the private sector do its job.
- ***Timely project execution*** – since time is money to private sector partners who cannot afford to allow the duration of a project to drag out. Having strong leadership, a solid organization structure, and clear lines of communication promote project timeliness.
- ***A detailed business plan*** – or enforceable contract that is performance-goals oriented to allow for innovation. The contract or plan should include specific milestones and goals, reporting metrics and frequency, and dispute resolution procedures.
- ***Early project development activities that are shared and supported by the public sector*** – commensurate with the capability of the public sector to carry out these activities and manage their inherent risks. The private sector will look to the public sector to take a lead on those project elements that it is best able to handle, especially such activities as right-of-way acquisition and environmental clearance, which represent areas of high risk and uncertainty to the private sector.
- ***Clear lines of communication*** – between all project sponsors. Having a communications plan in place will result in fewer crossed wires and enable smooth and timely project completion. Private sector partners in particular will seek to interact with one point person (or team) from the public sector to report issues and progress and to ask questions. A good plan will detail the project’s regular reporting cycle, as well as whom to contact when issues arise. Many projects find that communications are eased when private and public sector partners are co-located at a joint project office, often on-site.
- ***Pre-defined dispute resolution process*** – that lays out the roles, responsibilities, and procedures for addressing disputes that may arise during the project regarding contract compliance by all members of the partnership. PPPs are intended to minimize the need for such a process through on-going communication, close coordination, and mutual self-interest to resolve differences without having to resort to a dispute resolution process. However, having such a process in place before the project begins will reduce the risk of potential disputes negatively impacting the viability of the project and undermining the essential trust between members of the partnership.

When each of these elements is in place, the private sector will be encouraged to participate in a project through a PPP arrangement.

## **IV. MAJOR IMPEDIMENTS TO PPPs AND STRATEGIES TO OVERCOME THEM**

This chapter discusses the major impediments to successful PPPs and suggested strategies to overcome them. The contents of this chapter are based primarily on the results of roundtable discussions among workshop participants, including session presenters, panel members, public and private sector practitioners, and novices interested in PPPs as a way to leverage transportation resources and expedite project development and delivery.

### **IMPEDIMENTS TO SUCCESSFUL PPPs**

While the characteristics that define successful public-private partnerships are known, several impediments can stand in the way of PPP project and program success. Impediments to PPPs may be categorized in six major ways:

- Legal prohibitions, regulatory restrictions, or procedural restrictions that amount to a lack of authority to engage in PPPs;
- Lack of familiarity with the PPP process and allocation of roles, responsibilities, risk, and returns as well as limited knowledge of examples of successful PPPs by agencies, potential private sector partners, or the general public;
- An overly bureaucratic approach by state transportation or other agencies and/or lack of consistency in how transportation agencies interpret statutes and regulations regarding PPPs;
- A disconnect in approach and understanding between potential public and private sector partners;
- Institutional inertia or opposition by parties fearing change to traditional project delivery approaches or harboring distrust for the opposite sector;
- Lack of dedicated revenues or innovative financing mechanisms to support projects.

These issues are examined in further detail below, illustrated with examples of impediments faced by PPP workshop host agencies.

#### **Statutory Authority**

Many state transportation agencies are unable to enter into PPPs because they lack the statutory authority to do so. Among states hosting workshops, California, North Carolina, and Washington presently have no or very limited statutory authority to use PPPs in their highway programs.

In California AB 680 was one of the earliest legislative efforts to establish a state PPP program for highway project development. However, by being among the early states to pursue PPPs, the California initiative was too early to benefit from the lessons learned by other innovators in PPPs. Consequently, the statute limited the scope of partnerships by requiring private sector developers to assume all project risk and expenses associated with project development. AB 680 is widely perceived as narrowly drafted enabling legislation that was too limiting to enable a wide range of innovating PPP projects. Indeed, some have described AB 680 not as PPP



legislation but as privatization legislation. New legislation presently under consideration in Sacramento would broaden the scope of PPPs in the state by authorizing the Caltrans to enter into agreements with private and public partners including local government entities, county transportation commissions, and metropolitan transportation organizations. The proposed legislation would permit PPPs for both highway and transit projects, using various contract arrangement and terms.

In North Carolina GS 128.6, the state's only statute presently authorizing PPPs, is limited in scope and prescriptive in approach. Private participation in the construction of public streets or highways is permitted only under very limited conditions, and NCDOT is authorized to provide no more than 50 percent of project funding. The law requires developers to acquire right-of-way, which is problematic when NCDOT already possesses proposed right-of-way or condemnation action by NCDOT is required to acquire land. Its application is limited to small projects, as PPPs under this statute may constitute no more than 1 to 2 percent of NCDOT's total capital program. Moreover, only competitive low-bid contracting is utilized. To date only a handful of projects have been completed under this statute, including a \$7 million interchange expansion project along Interstate 40 near a Durham mall. The state is presently reviewing potential legislative initiatives for flexible PPP legislation. In the mean time, the new North Carolina Turnpike Authority, which has broader authority to innovate, will experiment with alternative procurement approaches that will be evaluated for potential wider application within NCDOT.

In Washington State the original Public-Private Initiatives in Transportation Act (Washington Revised Code sections 47.46.010 to 47.46.900) provided broad authority for alternative procurement and the use of innovative financing to advance transportation projects. It created the framework for the successful solicitation of proposals and competition of PPP agreements. However, an inability by policymakers to refrain from modifying PPP authority legislation and some infirmities in the authorizing legislation ended efforts to complete the state's only surviving pilot project, the Tacoma Narrows Bridge, as a PPP. In addition, institutional and cultural impediments halted the process, though it should be noted that the Washington State PPP statute was enacted in the early 1990s, prior to the development of the level of knowledge and sophistication that surrounds the establishment of PPP projects and processes today. These impediments have not been successfully overcome to date, though the legislature now in session has expressed an interest in re-establishing PPP authority for transportation projects. In addition, the state continues to successfully apply other alternative procurement processes, including design-build on a limited basis, and has successfully used private sector participation in the financing of interchange projects and right-of-way acquisition.

In total, only 21 states have legal authority to utilize private-sector participation in highway projects, according to the recent USDOT *Report to Congress on Public-Private Partnerships*. Legislation in all but a few of these states places significant limitations on their ability to implement PPPs. Twenty-nine states lack the necessary statutory authority to enter into PPPs for highway projects. This makes a clear case for creation and distribution of model legislation that demonstrates the provisions required of a clear, flexible, and functional PPP program statute. Even within the states with the legal authority to engage in PPPs for transportation projects, several passed enabling legislation years ago and have yet to implement a single PPP project.

These states too could benefit from model legislation that provides a fresh perspective on PPPs in an effort to re-initiate the concept.

Model legislation might include provisions from Oregon's PPP legislation, SB 772, enacted in 2002. The measure promotes innovation, cost efficiency, and speed in transportation projects, and enables the Oregon Department of Transportation (ODOT) to underwrite any project that facilitates any mode in the state, emphasizing best value over lowest bid—a key difference from more traditional transportation project delivery methods. In addition, the bill exempts ODOT from most state government contracting rules, paving the way for enhanced interaction between the state and potential private partners.

Another model is the Texas Exclusive Development Agreement (EDA) concept, a PPP arrangement established under HB-3588 in 2003 that emphasizes fixing prices early in the design phase, establishing a guaranteed completion date, assigning project risk, streamlining project administration, and enhancing cost control and risk management. The process also identifies a single point of responsibility within each private and public sector partner and applies life-cycle cost efficiencies and continuous constructability reviews. Proposals are evaluated based on “long-term best value to Texas,” a performance-based contract approach that provides contractor flexibility in meeting performance goals.

### **Familiarity with PPP Concepts**

An early roadblock to establishing PPPs is the general lack of familiarity with both the mechanisms for developing and implementing PPP projects, and successful examples where this has occurred. There may be limited knowledge of the public and private sector roles, responsibilities, risks, and returns. Oftentimes, this occurs in states where PPPs are new or entirely untested, or where there is little institutional impetus to attempt PPPs. This lack of familiarity may extend to the general public, whose support for a particular project may weigh heavily on the PPP's ultimate success.

Impediments common to emerging PPP programs that are a function of an agency's lack of familiarity with the process include the following:

- Uncertainty regarding the nature of PPPs and the potential for project success or failure;
- Uncertainty among potential partners regarding the capabilities needed, resources required, and commitment of the project sponsor and the potential for success of a PPP project;
- Difficulty in determining where to start in defining a project for possible implementation as a PPP;
- Uncertainty as to when to involve the private sector, what roles each side should play in the partnership, and whether the private sector will participate if offered the chance to;
- Scope creep that affects the product, timing, and cost of the project and determination of responsibilities for cost and schedule overages and product quality problems once the overall project vision is established by the public sector sponsor; and
- Lack of communication between partners during the process that leads to misunderstandings and problems in execution.

There is a lack of familiarity with the concept of PPPs within many state transportation agencies. Many participants in the Partnerships in Transportation workshops reported that they had been unaware of the number and variety of successful PPPs around the country prior to attending. Beyond the limited exposure to PPPs as a concept, there is limited understanding of how to deal with the private sector. Concepts such as risk, reward, and return on investment are foreign to many in the public sector, but are concepts essential to successfully brokering and facilitating PPPs on behalf of a transportation agency. But while broad knowledge of PPPs across an agency is important, states that have had the greatest success have established core groups dedicated exclusively to the development and management of PPPs.

Familiarizing the general public with the concept of PPPs is also important to improve the potential for new PPPs to be established in a state. In Washington State, the lack of public support for candidate projects identified for piloting the PPP concept was a contributing factor to the state's stalled PPP program. California includes educating the motoring public and public sector officials of the value of PPPs in reducing congestion, increasing safety, saving time, improving the movement of goods and people, and encouraging investment in the state to benefit the state's economy.

Minnesota's first attempt at a PPP project, the TH-212 toll highway in the Twin Cities area, was stopped by the city council of one town through which the highway would have passed. At the time, a local consent clause in Minnesota's constitution permitted municipalities to veto state highway projects through their jurisdictions. According to one state transportation official's retelling, the conventional wisdom was that the project would have succeeded if only one more councilmember in the affected community had supported it, but at the root level, a lack of communication doomed TH-212. He added that there is a need to communicate with community leaders and get broad citizen involvement early in the process to inform public opinion before detractors can derail the project.

## **Bureaucracy**

A third roadblock to developing a PPP program is the bureaucratic process of government through which projects must evolve. Current statutes and regulations regarding environmental review, right-of-way acquisition, and project contracting may promote the status quo and inhibit the innovation and resources that PPPs can provide to the process. In some states and between levels of government, there is a lack of consistency in how transportation agencies interpret statutes and regulations regarding public-private partnership project delivery. General red tape within the transportation agency or other governmental institutions relating to procurement, permitting, and other approvals may delay projects beyond the risk tolerance of prospective private sector partners. In some cases, there may be a lack of support among bureaucrats to any change in rules from the traditional operating paradigm.

Bureaucracy within the unit charged with management of PPPs may also be an issue. There may be an inability for public-sector agencies to adequately manage the risk associated with PPPs. Staff dedicated to PPPs may be spread thinly over many divisions of the agency instead of existing as a specialized corps of professionals responsible for managing PPPs. Potential private sector participants may have limited opportunities for innovation due to continued use of prescriptive standards, approaches, and materials for which there may be superior alternatives.

California's PPP program, established in 1989 by AB 680, suffered as projects were slowed or stopped entirely as private sector project sponsors attempted to navigate the state's extensive bureaucracy. AB 680 provided for the private sponsorship of four pilot projects, in which the private sector was to bear all risks associated with project development, permitting, and financial solvency. In the end only two projects were ultimately advanced, the 91 Express Lanes along SR 91 in Riverside County, and SR 125 Toll Road in San Diego County. To date, only the 91 Express Lanes project has been completed, constructed with 100 percent private sector funds at a cost of \$130 million. SR 125, a 12.5 mile toll highway will open in fall 2006, 15 years after the franchise was awarded in 1991. A key lesson learned by Caltrans from its experience with the SR-125 project is that the public sector should manage the environmental approval process, which insulates private sector partners from the bureaucratic processes associated with environmental approvals and permitting.

Florida's Turnpike Enterprise (FTE) took more than three years to negotiate an agreement with its partners for the Southern Connector project, including the Walt Disney Company. FTE sought to mitigate the perceived risk associated with teaming with private sector partners by developing a very detailed and lengthy contract. In the end, the private sector contributed over 50-percent of project costs, and the agreement paved the way for additional PPPs between FTE and private sector partners. The knowledge acquired from the Southern Connector experience led to faster negotiations and shorter contracts for subsequent agreements.

Despite the challenges bureaucracy may present for PPPs, it is important for states to move carefully. TxDOT has adopted a stringent procurement process for its PPPs, lasting from 8 to 18 months for the typical project, in an effort to protect the public interest. However, that this has not stopped the State from implementing PPP projects or been a substantial deterrent to the private sector.

If an agency's bureaucratic procurement process dissuades private sector partners from participating, otherwise successful PPPs may be precluded. Repeatedly during workshop presentations, private sector presenters urged transportation agencies to create clear, date-certain, consistent procurement processes for PPPs that would reasonably attract private partners.

### **Cultural Differences**

Public and private sector members of a partnership may have significantly different cultural attributes that can affect the viability of the partnership. For example, public agencies tend to focus on the public interest while private firms tend to focus on profit or return on investment. Public sponsors may also have different objectives and priorities for supporting a project than their private sector partners. Other cultural differences between public and private partners may include the following:

- Process driven versus product or service driven;
- Short-term versus long-term timeframe;
- User focus versus customer focus;
- Risk averse versus managed risk;
- Sunk costs versus investments to be preserved;

- Wait for full funding (debt free) versus build and pay off (with debt);
- Rigid versus flexible;
- Standardized versus tailored;
- Traditional versus innovative;
- Monopoly versus competitive;
- Hierarchical versus empowered staff; and
- Limited resources versus leveraged resources.

Cultural differences can also create the potential for friction between public and private partners. One example is the level of confidentiality sought by private firms, which could be subject to public sector procurement requirements intended to promote a more transparent contracting process. In most cases, private firms would prefer to keep their creative strategies, techniques, and tools confidential and not open to public disclosure and accessible to their competitors. Another example is the difficulty in attracting private sector interest in a proposed PPP project that has marginal potential for profitability to the private sector partner, regardless of the public benefits that may be realized from the project. Each sector may have different financing goals for projects, based on short-term and long-term performance criteria and reporting requirements. These differences may complicate efforts to develop an acceptable financing plan for PPP projects that is compatible with the respective roles, risks, and rewards defined for each partner.

The cultural differences between the public and private sectors and past abuses in procurement and contracting for infrastructure projects has left a legacy of distrust between these two groups. Overcoming this mutual distrust is a major challenge for proponents of PPPs and the best solution may be to learn from the mistakes and successes of earlier pioneers in PPPs and by getting at least one popular and solid project successfully through the process. Another strategy is to start with a smaller project with a higher probability for success so that the complexity of the project does not overwhelm efforts to develop and implement the partnership. It is only through the development and implementation of mutually acceptable partnering arrangements that each participant will begin to break down the barriers of distrust and seek out the other for project support.

Texas is implementing a concession model PPP program that seeks to merge the best of what government has to offer with the best of what the private sector has to offer. The goal of PPPs (or comprehensive development agreements, as they are known in Texas) is to minimize public tax-based funding, maximize private investment, encourage innovation and efficiency, accelerate project delivery, operate in a business-like manner, and share project risks.

In California, however, a disconnect between private and public sector motives ultimately led to the transfer of the 91 Express Lanes project from private developers to a public agency in 2004. AB 680, the act authorizing a PPP pilot program in California in 1989, included a non-compete clause that effectively prohibited the public sector from improving the capacity or constructing any highway projects that would compete with (or, more accurately, divert tolls from) any private toll roads developed under the act. Suffering from congestion in the SR 91 and parallel corridors and hamstrung by the non-compete clause authorized by AB 680, the Orange County

Transportation Authority (OCTA) purchased 91 Express Lanes from the private consortium that developed the highway just six years after the facility opened to traffic. OCTA adopted a toll policy that balances capacity and demand, serving full pay and carpool (HOV-3) customers, optimizing throughput, covering expenses, and using net revenues for corridor improvements. Since takeover, OCTA has improved traffic along the corridor, although revenue from the 91 Express Lanes has declined somewhat, reflecting the different values of the managing agency from its private sector predecessor. The private sector is still heavily involved in the project, however, as two OCTA staff members are the only public sector employees dedicated to the 91 Express Lanes. Operations, maintenance, customer service, finance, and accounting are contracted out by OCTA.

At present, the administration of California Governor Arnold Schwarzenegger is supporting efforts to revitalize PPPs in transportation in the Golden State. In an effort to limit the impact of AB 680's non-compete clause on future projects, proposed legislation exempts projects included in state or local long-range transportation improvement plans from the non-compete clause and defines the method by which private developers would be compensated as a result of developing competitive facilities within the same corridor as a tolled facility.

During one of the workshops the disconnect between state transportation officials and the private sector became apparent when a senior State DOT official suggested that the state's lack of legislation enabling PPPs or regulations to manage PPP proposals did not inhibit the state from receiving and evaluating unsolicited PPP proposals. Several private sector participants in the workshop responded that even with state-enabling legislation, a private sector team would not be willing to submit an unsolicited proposal to an agency without understanding the procedures for managing the PPP development and implementation process. Private sector partners require a defined process that clearly specifies how their proposal will be evaluated and safeguards proprietary information before they will invest in creating such a proposal. Without defined regulations and procedures for effectively managing the procurement and contract administration processes, a public sector agency will not likely receive many unsolicited proposals for PPPs even though legal authority exists to permit such project arrangements.

Differences in cultural orientation between the public and private sectors are also part of what makes PPPs attractive, particularly when both partners are able to bring different yet complementary interests, perspectives, and resources to the project. Indeed, the differences between public and private sector partners can be the foundation for successful PPPs. Environmental clearance, permitting, and land assembly are risks best managed by the public sector, while private sector partners may specialize in innovative project delivery or project finance. The distribution of risks should match participant strengths, and there should be public investment in the development process. Balancing the strengths of each sector is crucial to advancing PPPs and avoiding a public-private disconnect.

Cultural differences between members of a partnership can have a significant impact on the ability of public-private partnerships to develop and be successfully implemented. Recognizing and accommodating these differences is one of the most important challenges of the partnership formulation and negotiation process. While many State highway agencies are seeking to become more flexible, customer driven, and innovative, both cultural and legal constraints often limit these transformations. Many would like to have more flexibility to adapt procedures to project

requirements. The formation of a PPP can provide the opportunity to selectively apply new processes and approaches to project development and thereby gradually transform the cultural attributes of the sponsoring agency.

### **Institutional Inertia**

Institutional inertia or outright opposition by transportation program administrators/staff and members of the construction/design industries can stop a PPP program before it can prove itself. Established institutional players are more likely to resist changes in traditional processes and approaches because of fear that change will undermine their jobs or competitive positions. This may be reinforced by a lack of trust in the private sector and vice-versa. This institutional bias against greater private participation in the project development process is perceived as a potential barrier to greater private financing, with the potential for “money looking for projects”, in the words of one private banker. There is also a tendency to walk away from PPPs following failure without a strategy for attempting future—more successful—PPPs.

Institutional opposition to PPPs at all levels within state government has been an impediment to PPPs in California. A major roadblock is the state’s Professional Employees in California Government (PECG), a professional association representing many professional employees in Caltrans. A majority of Caltrans’ project engineering is handled by in-house staff resources—only 5 percent of state dollars for project engineering are spent on private-sector engineering compared to an average of 64-percent in all other states—and PECG members actively oppose any efforts to outsource work through PPPs or other innovative project delivery methods. In fact, PPPs are widely perceived by many within state government as nothing more than outright “privatization.” In remarks at the Sacramento workshop, a California transportation official stated that there was a need to convince labor that PPPs are not applicable to 100-percent of the transportation program, and that labor and management have a shared objective of providing the best transportation system to Californians. Given the strength of labor interests in California in general and their influence within state government particularly, establishing PPPs in California’s highway program will continue to be a challenge for prospective public and private sector sponsors. Where success has been achieved in attracting private sector support for transportation infrastructure projects in California has been among regional and local government sponsors, particularly in Southern California.

An additional roadblock in California has been the lack of continuity in PPP policy associated with changes in gubernatorial administrations. Support for PPPs has shifted drastically from one administration to the next due in large part to widely varying political philosophies. This lack of consistency and the fear of near-term changes to any PPP program that is established have discouraged the private sector from actively pursuing PPP ventures with the state. Recently, state transportation policymakers from the governor on down have publicly expressed support for establishing PPPs to send a signal that the state values the skills, efficiency, know-how, and financial strength of the private sector in developing transportation infrastructure and is ready to be an active partner in PPPs. To date, however, the state does not have an active statute authorizing PPPs. Until that occurs, California will not likely be an active player in the public-private partnership arena.

Minnesota required enabling legislation for design-build project delivery to advance its PPP program and faced an uphill battle against the state’s Association of General Contractors (AGC),

many of whose members opposed design-build. While design-build enabling legislation was successfully enacted in 2001, the MnDOT continues to cite changing cultural roles and responsibilities within the Department and the contracting community alike as a continuing impediment to PPPs, one which will require many years and projects to change.

Institutional inertia and bureaucracy at all levels of government may inhibit the application of innovative project delivery approaches such as design-build, alternative financing, or PPPs. At one of the workshops, participants spoke of their fear of applying federal monies to a project because of the added burden imposed by federal regulations and requirements.

### **Revenues and Financing Mechanisms**

Another key impediment to PPPs is a lack of dedicated revenue sources or innovative financing tools to enable projects to be developed. Even with willing and able public and private sector partners, a potential PPP will become stalled if the revenues or financing mechanisms do not exist to support the project. Projects must “add up”—they must be financially feasible for both partners. As noted by several private sector participants at the workshops, the private sector is not in business to subsidize the public sector and private sector partners will expect to earn a reasonable rate of return on their investments in PPP projects. To facilitate a prospective PPP project, direct user fees and other revenue sources may need to be tapped. Whatever their source, dedicated revenues are generally the best way to support a PPP project’s financial plan.

In addition to developing dedicated revenue sources, another way to improve the financial feasibility of a project is to reduce its overall costs. PPPs offer the potential to significantly reduce projects costs through the application of more efficient methods and technology, streamlined processes, and performance-based contracts for part or all of a project’s life-cycle, including operation, maintenance, and preservation of the facility. These cost-saving aspects of PPPs are an important reason to consider PPPs, whether the projects are funded using traditional funding and financing approaches, or through the institution of direct user charges such as tolls or other innovative funding and financing approaches. Thus while PPPs are often viewed as a means to enhance the funding potential for a project, their cost-saving potential is an equally important consideration regardless of whether private funding or financing is involved.

California’s AB 680 called for PPPs to be developed without the investment of any public monies, which limited the franchises permitted under the act to toll highways. In reality, most PPPs are advanced by leveraging public funds through tolls or other revenue sources as well as innovative financing. Yet the concept of public sector investment in PPPs can be misunderstood by the public sector if there are no dedicated revenue sources for the project. PPPs are not a means to fund “bad” or financially unfeasible projects. What the private sector typically brings to a project is the ability to deliver the project in a timelier and cost-effective manner, such that whatever direct revenue sources are tapped can be maximized. The private sector is not typically a major source of revenues for PPP projects, unless the project results in a direct benefit to the partner (such as improved accessibility to developable property served by the facility and owned by the partner). This can be enhanced with the provision of longer-term contractual arrangements, such as the 99-year concession recently awarded for operation and preservation of the Chicago Skyway (a tolled elevated highway) to a private consortium. However, PPPs are not a solution for implementing transportation projects for which there is an absence of definable revenues to fund the projects.



Tolling can be the dedicated revenue source to support PPP projects, and efforts such as SEP-15 and language in proposed bills to reauthorize the Federal Highway Program could enable more facilities to utilize tolls (for example tolling federally-funded sections of the Interstate highway system to afford major capacity improvements). It is also important to consider revenue sources beyond tolling. Successful PPPs implemented without tolls include the Route 28 corridor in Northern Virginia, which was supported by a special taxation district and numerous transit-oriented joint development projects. Other non-tolling revenue sources include tax increment financing, naming rights—a concept familiar in the arena of professional sports facilities but not yet commercially applied to highways—and privately-financed interchanges, in which developers pay for interchange improvements or installation in exchange for the increased development potential resulting from the improved accessibility provided by the facility. PPPs will flourish when they are supported by a host of innovative project development and delivery tools, including revenue and grant-anticipation bonding, shadow tolling, unsolicited proposal bidding, design-build, design-build-finance-operate-maintain agreements, and life-cycle performance-based project delivery and management.

A related impediment to PPPs is the prohibition on private activity bonds for surface transportation projects. Private activity bonds (PAB) are tax-exempt bonds issued by private sector partners in public use infrastructure projects. Private activity bonds enable the private sector investment community to effectively compete with tax exempt municipal or public bonds, thereby attracting greater investment into the public use transportation arena. They provide special financing benefits for qualified projects in designated infrastructure markets. PABs are presently permitted for airport, wastewater treatment, and power generation projects. In lieu of PABs, transportation agencies have applied other strategies to limit their exposure to bonded debt for PPP projects such as forming non-profit 63-20 or 501(c) 3 corporations. These arrangements, however, limit the operating flexibility and private equity or investment that would be encouraged by private activity bonds.

## **STRATEGIES TO ADDRESS IMPEDIMENTS TO PPPs**

There are a number of stages comprising the development life-cycle of PPP projects. Project sponsors and partners have a major stake in the success of each of these stages to produce a successful project. The various stages are listed below in sequence:

- Conceptualizing and defining the project;
- Developing the partnership;
- Funding and financing the project;
- Balancing risks and returns;
- Nurturing the partnership; and
- Nurturing the program.

There are a variety of strategies for addressing impediments to public-private partnerships at different stages in the PPP project life-cycle. These are based on “lessons-learned” comments and suggestion provided by workshop participants and practitioners during the workshop session dialogues and in-depth roundtable discussions. Applying these strategies across a PPP program

or to individual PPP projects can mitigate or even eliminate many of the impediments described earlier in this chapter.

Possible strategies to address impediments to PPPs at each stage in the project development life-cycle are listed below.

### **Conceptualizing and Defining the Project (Getting Started)**

- PPP project success or failure will depend on many factors, the most important of which is the nature and level of interest of project stakeholders and their willingness and ability to commit to the project as partners.
- Identify a public official to champion the project from start to completion and ensure compliance with project outcomes and contract terms. Leadership from elected and appointed officials is essential. Establish a dedicated workforce for execution of projects to refine the agency's project execution expertise.
- Define a clear vision for the project so that interested parties from the private and public sectors can determine their potential interest.
- Establish clear guidelines for PPP development, including key milestones, timeframes, roles, responsibilities, and requirements. Ensure that there is consistency in the public sector's approach to development of PPP projects, including consistent statutes.
- Encourage information sharing among practitioners and parties interested in PPPs internal and external to the sponsoring transportation agency to build institutional knowledge of the approaches, techniques, and methods of developing and executing PPP projects.
- Tailor each PPP to its institutional, jurisdictional, transportation, economic, and financial context. Innovation must be added to imitation, as each project is different and offers unique opportunities to refine the PPP approach and structure. A "one size fits all" approach cannot be applied to PPP legislation, regulations and procedures, contracts or projects—projects are simply too large and complicated to use a "cookie cutter" approach.
- Aim for early success: solicit private sector interest in both solicited and unsolicited transportation projects and then start with the project most likely to succeed.
- Careful partner selection is essential. PPPs can be viewed like a "marriage" between private and private sector sponsors, with shared responsibilities, risks, and rewards over an extended timeframe. Therefore, prospective partners should verify the experience, technical capability, and financial capacity of their counterparts to avoid an early "divorce" or "annulment". Public sector agencies should select partners on the basis of best value, which may not be the lowest cost.

### **Developing the Partnership**

- PPPs can come in many forms, depending on the interested parties, the nature of the project, the functions required, the degree of private sector participation, the and division of roles, responsibilities, risks, and rewards.

- Involve all public and private stakeholders with an economic or other interest in the project willing and able to participate as potential partners in project financing commensurate with their expected benefits.
- Involve private sector partners in project conceptualization as soon as possible to gain maximum advantage of their insights and suggestions.
- Understand the motivation of all parties to a PPP to produce the best overall partnership approach and contract
- Achieve full “buy-in” to the project and its delivery approaches from all partners.
- Develop communications channels between project stakeholders, including the general public, contractors, all sizes of business interests, and the political infrastructure at both the state and local levels.
- Determine specific objectives, unambiguous contract requirements, and measurable performance targets for the project to clearly define project requirements up front and to ensure accountability by the partners for their areas of responsibility.
- Encourage private sector creativity to most cost-effectively achieve project objectives.
- Focus on performance outcomes and benefits—not just the process or procedures.

### **Funding and Financing the Project**

- Let the project define the financing—but allow the financing to define the project delivery approach.
- Consider the full range of possible funding sources, not just tolls—i.e., new credit programs, joint development prospects, new revenue sources, and private activity bonds. Consider permitting funding strategies appropriate to local or regional sponsors of PPP projects.
- Define the financing plan before beginning development:
  - Identify project benefits and beneficiaries;
  - Let government partners take fiscal responsibility for project elements serving purely social objectives (such as free access to transit vehicles on tolled lanes);
  - Understand the allocation of financial risks among partners; and
  - Identify contingencies and have a plan to fund them.
- Enable private sector partners to make a reasonable return on their investment—no profit potential means no private capital will be put at risk.
- Encourage federal lawmakers to lift the prohibition on private activity bonds for public use transportation infrastructure.

### **Balancing the Risks and Returns**

- Transfer financial/project risks to the private sector provided the private sector has the authority and capability to manage conditions that are likely to impact these risks.

- Avoid imposing excessive risks on the private sector that will discourage their participation, particularly in the area of tort liability where private risk may be much higher than public risk.
- Develop a financing and project delivery framework that delivers the project in a timeframe comfortable to both private and public sector partners; for example, an expedited project in which payment is deferred over a longer timeframe at a reasonable rate of return to investors.
- Consider the vast array of funding and financing strategies available that tap potential stakeholders, including various value capture mechanisms. This includes tolls (value for travel convenience) where feasible to support investor confidence.
- Avoid trying to make a “bad” project into a “good” project merely by turning it into a PPP project:
  - Quality projects may be enhanced with a PPP approach.
  - “Bad” projects are unlikely to become viable even with a PPP approach.
  - The private sector will avoid “bad” projects if it bears the risk of failure.

### **Nurturing the Partnership**

- Maintain an air of civility among the partners based on mutual self-interest and respect.
- Establish ongoing communication among the project partners throughout the project development process to quickly recognize achievements and address problems in a constructive manner, such as through a pre-defined dispute resolution process.
- Communicate status, progress, and results of project quickly and openly to the public to gain their understanding, support, and enthusiasm.
- Establish a process that includes accountability, integrity, and transparency, where the roles, responsibilities, risks, and rewards of the project are clearly defined and understood by all, with appropriate due diligence to ensure compliance with contract conditions, terms, and requirements.

### **Nurturing the Program**

- Revise or change state and local statutes to facilitate PPPs and utilize programs that enable flexible interpretation of transportation program regulations, such as SEP-15.
- Be flexible in trying new approaches and techniques. Challenge the status quo if it is no longer working.
- Lock in the rules at the beginning of any project and grandfather changes that occur in underlying statutes, regulations, or procedures.

Together these strategies provide useful tips to help interested parties develop and implement successful PPP programs and projects and address or avoid some of the key impediments to effective partnering arrangements.

## V. CONCLUSIONS

This chapter discusses the impacts that the Partnerships for Transportation workshops had on their host agencies and the workshop participants, based on comments noted during the workshops, in the workshop evaluation surveys, and a follow-up survey of PPP program managers in each workshop host agency. In addition, the chapter highlights the various initiatives funded by FHWA which are intended to promote the use of PPP in the highway development industry. Finally, suggestions are provided for how FHWA might continue the enthusiasm generated by the PPP workshops among their participants from both the public and private sectors and help the host agencies and their staffs take the next steps towards a successful PPP program and sustainable PPP projects.

### IMPACTS OF PPP WORKSHOPS

The workshops have had an impact on host agencies commensurate with each state's experience with PPPs. In those places where establishing a PPP program was an emerging or struggling concept, the workshop offered insights to sponsors and change agents among state and local elected officials and transportation agency leaders interested in moving the concept forward and addressing those impediments that continue to hinder development of a PPP program and consideration of bone fide proposals for PPP projects. Where PPPs were just underway or a proven mechanism for project delivery, the workshops validated efforts thus far and provided an opportunity for interaction between public and private sector actors, including representatives from a host of public agencies beyond the state transportation agency.

At every workshop, participants praised the knowledge sharing fostered by the event and hoped for a continued dialogue on PPPs among stakeholders in the state and local highway development programs. Specific statements by representatives of the host agencies regarding the impacts of the PPP workshops are cited below:

- A Caltrans official stated that the workshop “would not have taken place if the current administration did not believe in and support the concept of PPPs. There has never been a shortage of ideas in the state or the nation. Transforming those ideas into action has always been of the essence.”
- A TxDOT representative described his agency's reaction to the workshops as “positive.” “We were already well on the road in using PPPs but [the workshop] exposed PPPs to many levels within our organization.”
- In North Carolina, a NCDOT representative reported that the workshop provided “education and focused attention and support for looking into legislative remedies” to remaining impediments to implementing PPPs in the state.
- In Washington State, a representative of the WSDOT noted that the workshops “provided an opportunity for increased understanding of the role PPPs could play as well as increasing the knowledge level among those without previous experience. Because our forum was bi-state (Washington and Oregon) the forum provided for the

sharing of ideas and an understanding of the directions being pursued by the states individually. Our workshop had a substantial number of Washington State lawmakers and policy agency heads in attendance. The workshop was an important element in providing a further impetus for legislators and others to explore the role of PPP's and consider re-establishing the state's program."

## **NEXT STEPS FOR PROMOTING PPPs**

Now that the initial six workshops are completed, there is a need to consider what kind of follow-up actions should be taken to ensure that the momentum and interest created by the workshops is maintained and increased. This is a topic that arose during the workshop wrap-up sessions, when numerous participants asked how they could follow-up on the results of the workshops, build on the enthusiasm that had been generated, further their knowledge and understanding of the PPP project development and implementation process, and obtain assistance in carrying the process forward to achieve successful implementation of PPP projects, when appropriate.

Many of the topics discussed during the workshops are important concepts for successfully developing and implementing public-private partnerships to expedite needed transportation projects, and to distinguish between projects well suited to a PPP and those less suited to partnering arrangements. The lack of understanding or misconceptions about these concepts and their relevance to both public and private sector members of transportation project partnerships suggests further resource materials and training in these concepts. In addition, there is a need to increase the understanding and flexibility of state transportation agencies towards the concepts and advantages of PPPs as an important option for developing, funding, and delivering projects. Guidance is also needed to help these agencies select candidate projects, define them to convey what the project will entail, and develop documents to ensure a transparent process and establish partner accountability.

One of the strongest and most frequent suggestions by workshop participants was for greater communication and sharing of ideas and experiences (both good and bad) that other state and local agencies have had in developing and implementing PPPs for their capital improvement projects. FHWA has already implemented a number of initiatives aimed at promoting broader consideration and use of PPPs to leverage available public sector resources for highway projects. These recent or current initiatives include:

- ***Establishing SEP-15*** – which encourages testing and evaluation of alternative approaches to all phases of the project development process, including: transportation planning, innovative finance, accelerated land acquisition, alternative project contracting and delivery, and environmental clearance functions-consistent with applicable federal and state laws and regulations such as NEPA. Among the objectives of SEP-15 is to identify and enable highway project sponsors to adopt PPP approaches on a trial and evaluation basis. SEP-15 demonstrates the institutional flexibility and willingness of the federal government to promote innovative ways of delivering projects that would be attractive to prospective private sector partners.

- ***Promoting state transportation agencies to implement PPPs*** – to expedite needed projects that could otherwise not be funded in a timely manner. As demonstrated by FHWA’s sponsorships of the six Partnerships in Transportation workshops conducted around the country, FHWA leadership is aggressively promoting the agency’s flexibility and willingness to consider alternative ways to develop and fund highway projects, including the use of PPPs.
- ***Developing Model State PPP Enabling Legislation and Contract Language*** – to help remove some of the legal and institutional impediments to implementing PPP projects. The model legislation summarizes key provisions in statutes of States that already have adopted PPP enabling legislation and provides illustrative language that could be used by other States as they develop their own enabling legislation. The model contract language is intended to remove uncertainties in how to include a variety of provisions in PPP contracts and agreements.
- ***Developing PPP Professional Capacity Building Program*** – to provide training for public and private sector groups in a variety of areas that may be encountered in PPPs. In discussions with State officials and with private sector groups active in PPPs, the need for training in project finance, risk analysis, performance-based contracting, and other aspects of PPPs has been identified as a critical need.
- ***Sponsoring Innovative Infrastructure Finance Conferences and Discussions*** – the issue of alternative funding sources and innovative finance strategies is timely given the inability of traditional funding sources and pay-as-you-go financing to meet the growing needs of the nation’s maturing highway system. The resulting dialogues are tapping the creative talents of noted transportation finance and policy experts from around the nation to come up with alternative funding and finance strategies that will close the gap between available funds and needs.
- ***Sponsoring Studies, Case Studies, and Issue Papers*** – FHWA is tapping the creative talents of various experts and firms to perform studies, prepare case studies, and submit white papers on such diverse topics as the long-term viability of fuel taxes for transportation finance; operational, institutional, policy, and programmatic issues associated with direct user charges; value-based and other forms of pricing of access to transportation infrastructure; financing special-purpose lanes such as HOT lanes and express lanes; the potential contribution innovative finance might have on closing the gap in needed highway program funding; the traffic impacts of adding tolling to existing highways.
- ***Issuing a Report to Congress on PPPs and Establishment of a PPP Web Page*** – both of these initiatives are aimed at getting the word (and a lot more) out to agencies, companies, and individuals who are interested in PPPs and how they can be applied to the nation’s fiscal dilemma regarding how to lower the cost of highway infrastructure while increasing the resources to preserve and expand the current highway system in the nation. The PPP Report to Congress was issued in December of 2004 and provides a comprehensive overview of the status of PPP programs and project initiatives in the surface transportation industry at the state and local levels. The FHWA PPP Web page

provides additional resources, reference materials, and linkages to other PPP-related web pages to enable practitioners and interested individuals alike to have ready access to information on PPP projects, the nature of each partnership, and sponsor staff willing to provide additional insights.

In each of these instances, FHWA is serving as both facilitator and participant in an effort to prompt the surface transportation industry to think and act creatively when it comes to paying for highway infrastructure needs. As portrayed in the book: *Who Moved My Cheese?*<sup>2</sup>, organizations like state and local transportation agencies can no longer sit by and wait for gas tax funds (the “old cheese”) to be increased sufficiently to offset the growth in highway program needs. Instead, FHWA is serving as a facilitator to those in the highway development community willing to experiment with new ways and resources (the “new cheese”) to get needed projects done in a timely manner.

While FHWA has been active in promoting PPPs across the nation through these various initiatives, there are other things FHWA might consider doing to further promote PPPs. In particular, FHWA might consider several strategies to respond to workshop participant calls for follow-up inquiries after the workshops are completed. These are listed below.

- ***Conducting Additional Workshops on the Complete Range of PPP Mechanisms*** – extending the workshops to an expanded series, based on requests from state transportation agencies willing to host and co-sponsor the events, including underwriting a portion of the costs to better leverage available federal funding. These workshops should build on the lessons learned from the six initial workshops, with appropriate retooling to emphasize the following presentation areas: the nature and variety of PPP mechanisms available to meet state and local transportation agency needs; existing statutory and regulatory authority from the federal government to apply PPPs and other related innovative finance and project development tools; sample legislation and programs from other states; and project experience from both public and private sector perspectives.

Additional workshops should be targeted at the full range of potential stakeholders in both the public and private sectors. States with a combination of limited experience and promising contexts should be targeted for the next round of workshops, particularly those states that have already expressed an interest in hosting future workshops.

- ***Developing a Toolkit for Early Applicants of PPPs*** – including key definitions and glossary of terms; profile of different types of PPPs; criteria for selecting candidate projects and partners for PPPs; guidance to define PPP projects and develop documentation for project solicitation, negotiation, selection, and evaluation; sequential development and implementation steps; checklists to guide project managers; case studies of representative PPP projects, how they were developed, and their results; and references for further information, including agency contracts and peer contacts.
- ***Developing a Rating System of State Readiness to Apply Innovative Approaches to Project Development*** – based on a set of pre-determined criteria that relate to the existence, comprehensiveness, flexibility, and applicability of state legislation and

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<sup>2</sup> *Who Moved My Cheese*. Spencer Johnson, M.D., Simon & Schuster, 1999.



regulations; clear identification of legislative and agency champions; institutional alignment of state transportation agencies and their leadership; and the degree of project application of PPPs and other innovative project development, funding, and delivery approaches.

- ***Professional capacity building or institutional strengthening*** – developing more focused training courses on the technical aspects of PPPs, including proactive project development, performance-based procurement and contract administration, mixed funding and financial management, and partner-based project management and control. These courses should be aimed at both early applicers and experienced practitioners, to promote knowledge through learning and the sharing of experience. Ideal candidates for such courses include participants in the first two rounds of workshops that would benefit from discussions on how to sustain a PPP program and build on past successes. Another target audience includes FHWA’s resource specialists and division administrators who daily work with state transportation agency officials to advance projects and ensure they are being properly executed.

These strategies represent some of the many ways FHWA might promote the consideration and adoption of creative approaches to leverage traditional Federal Highway Program resources, and to effectively build on the positive results of the six Partnerships in Transportation workshops completed over the past two years. They complement the completed and ongoing initiatives FHWA has sponsored in PPP research and documentation. For many states, this information needs to be aimed at the state legislatures to encourage them to grant the necessary statutory authority to state and local transportation agencies to enable them to successfully develop and implement PPP projects. Ultimately the test of FHWA’s PPP promotional program and its many initiatives will be the extent to which state and local transportation agencies develop PPP program resources and regulations and apply PPP arrangements to expedite and cost-effectively implement important infrastructure projects that might not have been done for many years.

**APPENDIX A:**  
**WORKSHOP SUMMARIES**

<b>VANCOUVER, WASHINGTON</b>	
<b>Date</b>	November 19, 2003
<b>Hosts</b>	Washington and Oregon State Departments of Transportation
<b>Location</b>	Southwest Region Headquarters, WSDOT
<b>Number and Type of Attendees</b>	<ul style="list-style-type: none"> <li>• Public: 75</li> <li>• Private: 10</li> </ul>
<b>State Context for PPP</b>	Applying the fundamentals for highway development in a state context. Washington and Oregon both are pursuing PPPs. Washington has implemented projects while Oregon has new legislation that has not yet been tested
<b>Workshop Structure</b>	<ul style="list-style-type: none"> <li>• Keynotes</li> <li>• Panel Discussion</li> <li>• Major speakers</li> <li>• Question and Answer Session</li> <li>• Participant roundtables</li> </ul>
<b>Speakers</b>	<ul style="list-style-type: none"> <li>• Craig Pridemore, Clark County Board of Commissioners</li> <li>• Dan Mathias, FHWA Washington Division</li> <li>• Panel <ul style="list-style-type: none"> <li>○ Dan Dornan, AECOM Consult</li> <li>○ Marty Brown, Washington Office of Financial Management</li> <li>○ Bruce Warner, Oregon Department of Transportation</li> </ul> </li> <li>• Shirley Ybarra, The Ybarra Group and Jerry Ellis, WSDOT</li> </ul>
<b>Key Discussion Points</b>	<ul style="list-style-type: none"> <li>• Transportation as a driver of economic development and need for private investment</li> <li>• The support provided by the federal aid program and key features of various reauthorization proposals</li> <li>• The importance of legislation that provides maximum flexibility for private involvement</li> <li>• Lessons learned in past state PPP legislation regarding public sector responsibilities in a PPP program</li> <li>• The concept of PPP as true collaborative endeavors requiring integrating strengths of partners and understanding their respective objectives and limitations</li> <li>• The need for public sector to understand reasonable rates of return in PPP in context of other investment opportunities</li> <li>• Recognition of variation in settings and appropriate combination of tools</li> <li>• Value of broad public involvement in developing PPP, toll and outsourcing policy</li> <li>• Strong implementation requires careful consideration of point of entry and stability</li> <li>• Startup requires clarity regarding who is in the lead and balancing intellectual property with needed transparency</li> <li>• Project structure and financial structure are closely related</li> <li>• There are many innovative financial tools beyond tolls</li> </ul>

**Partnerships in Transportation Workshop  
Vancouver, Washington**

**PROGRAM AGENDA**

**8:00 AM            REGISTRATION AND CONTINENTAL BREAKFAST**

**8:30 AM            WELCOMING COMMENTS**  
*County Commissioner Craig A. Pridemore (Clark County, WA)*

**8:40 AM            KEYNOTE ADDRESS**  
In the current fiscal environment, the USDOT is adopting a new approach to the development of transportation projects -one more favorable to innovative approaches such as public-private partnerships.  
*Dan Mathis, Federal Highway Administration Washington Division Administrator*

**9:15 AM            STATE AND FEDERAL DOT ROLES AND RELATIONSHIPS**  
A discussion on how these changing conditions impact states and their DOTs.  
Moderator: *Daniel Dornan (AECOM Consult, Inc.)*  
Panelists: *Marty Brown (Washington Office of Financial Management)*  
*Bruce A. Warner (Oregon Department of Transportation)*

**10:00 AM          FUNDAMENTALS OF PPPS**  
PPPs are being used in a broad range of applications, but what are the keys to bringing the private sector to the table, especially for transportation projects?  
*Richard Norment (National Council for Public-Private Partnerships)*

**10:30 AM          BREAK**

**10:45 AM          VOICES OF EXPERIENCE - HOW OTHERS ARE DOING IT**  
Two experienced practitioners discuss implementing PPPs, revealing what works and what doesn't for state/local projects.  
*Jerry A. Ellis (Washington State Department of Transportation)*  
*Shirley Ybarra (The Ybarra Group, Ltd.)*

**11:30 AM          QUESTION AND ANSWER**  
An interactive Q&A with workshop participants covering the morning's topics, with emphasis on the changing environment for all DOTs, and factors for recruiting private sector participation.

**NOON              LUNCHEON WITH KEYNOTE SPEAKER SENATOR BRUCE STARR (R-OR)**  
One of the driving forces behind Oregon's new transportation legislation discusses its significance for Oregon.

**1:00 PM            HOW TO APPLY THE CONCEPT OF PPPS - ROUNDTABLE DISCUSSIONS**  
Participants will divide into roundtables with each table discussing one of the following subject areas: Start-up Issues/Opportunities, Finance Issues/Opportunities, and Implementation Issues/Opportunities. Each table will address techniques used with specific skills needed for implementation of a PPP. Industry and public individuals with experience in PPP projects will serve as "Expert Resources" throughout the discussions to facilitate open and candid discussions of the "best steps forward" for projects.

**3:15 PM            BREAK**

**3:30 PM            ROUNDTABLE REPORTS**  
Each facilitator will provide a summary of the discussions.

**4:15 PM            CLOSING REMARKS**

**4:30 PM            ADJOURN**

<b>MINNEAPOLIS, MINNESOTA</b>	
<b>Date</b>	December 8, 2003
<b>Host</b>	<ul style="list-style-type: none"> <li>Minnesota Department of Transportation</li> </ul>
<b>Location</b>	Hilton Minneapolis Hotel and Towers
<b>Number and Type of Attendees</b>	<ul style="list-style-type: none"> <li>Public: 88</li> <li>Private: 22</li> </ul>
<b>State Context for PPP</b>	Minnesota is facing tough fiscal constraints and has had positive experience with design-build but encountered public resistance to toll roads
<b>Workshop Structure</b>	<ul style="list-style-type: none"> <li>Keynotes</li> <li>Major speakers</li> <li>Case study presentations</li> <li>Panel Discussion</li> <li>Participant roundtables</li> </ul>
<b>Speakers</b>	<ul style="list-style-type: none"> <li>Gov. Tim Pawlenty, R-Minnesota</li> <li>Rick Norment, NCPPP</li> <li>Rep. Mark Kennedy, R-Minnesota 6<sup>th</sup> District</li> <li>Douglas Differ, Deputy Commissioner/Chief Engineer, MnDOT</li> <li>Sherri Alston Director, Office of Transportation Policy Studies, FHWA</li> <li>Lt. Gov. Carol Molnau, R-Minnesota and Commissioner, MnDOT</li> </ul>
<b>Case Studies</b>	<ul style="list-style-type: none"> <li>Risk Analysis: Davie Lewis, HLB Decision Economics</li> <li>History of PPP projects: Shirley Ybarra, Ybarra Group</li> <li>PPP in Texas: Phillip Russell, Director, Texas Turnpike Authority</li> <li>New context for PPP: Dick Braun, Center for Transportation Studies, University of Minnesota</li> </ul>
<b>Key Discussion Points</b>	<ul style="list-style-type: none"> <li>Effective program development requires convincing the public that project would not have happened without private sector involvement</li> <li>Communication and trust building including transparency and accountability is essential to stable partnerships.</li> <li>To attract private investment, a reasonable return on investment is essential</li> <li>A systematic regional planning process can identify projects that are more or less strong regarding revenues and good candidates for toll finance and private involvement</li> <li>Non-political transportation “champions” can focus public and private participants on the potential of PPP and potential benefits.</li> <li>To establish the credibility of innovative finance and project development mechanisms, pick strong projects to be early winner (not discards from the Transportation Improvement Program)</li> <li>Innovation is best fostered via performance- rather than prescriptive-based approach that enables the creativity of the private sector</li> <li>It is important to utilize referendum legislation to designate revenue streams and clarify regulations regarding toll and local option-financed projects</li> </ul>

## **Partnerships in Transportation Workshop Minneapolis, Minnesota**

### **PROGRAM AGENDA**

**7:15 AM            REGISTRATION AND CONTINENTAL BREAKFAST**

**8:00 AM            WELCOMING COMMENTS**  
*Governor Tim Pawlenty (State of Minnesota)*

**8:15 AM            FUNDAMENTALS OF PPPS**  
PPPs are being used in a broad range of applications, but what are the keys to bringing the private sector to the table, especially for transportation projects?  
*Richard Norment (Executive Director, National Council for Public-Private Partnerships)*

**8:45 AM            FAST LANES**  
"FAST Lanes" are a hot topic in Minnesota, especially with the legislative proposals currently before the US Congress. Both the federal and state perspective will be covered in comments by two speakers, followed by a dialogue with workshop participants.  
*Douglas Differt (Deputy Commissioner/Chief Engineer, Minnesota DOT)*  
*Mark Kennedy (Congressman, Minnesota 6th District)*

**9:30 AM            KEYNOTE ADDRESS**  
In the current fiscal environment, the USDOT is adopting a new approach to the development of transportation projects -one more favorable to innovative approaches such as public-private partnerships.  
*Sherry Alston (Director of Transportation Policy Studies, Federal Highway Administration)*

**9:50 AM            REMARKS**  
How can Minnesota respond to this change in "the way we do business?"  
*Carol Molnau (Lieutenant Governor, State of Minnesota)*

**10:05 AM          OPEN DIALOGUE**  
A dialogue between Alston and Molnau with Q&A from workshop participants.  
*Carol Molnau (Lieutenant Governor, State of Minnesota)*  
*Sherry Alston (Director of Transportation Policy Studies, Federal Highway Administration)*

**10:30 AM          BREAK**

**10:45 AM          PPP SUCCESS STORIES**  
Experienced practitioners discuss how they were able to implement PPPs in their respective states, revealing what works and what doesn't. Examples for Virginia, Florida, Texas and other states will be reviewed. Extensive Q&A from workshop attendees will be included.  
*David Lewis (CEO & President, HLB Decision Economics)*  
*Phillip Russell (Director, Texas Turnpike Authority Division, TxDOT)*  
*Shirley Ybarra (President, The Ybarra Group, Ltd.)*

**12:30 PM          LUNCHEON WITH ROUNDTABLE DISCUSSIONS**  
Participants will divide into roundtables with each table discussing one of the following subject areas: Start-up Issues/Opportunities, Finance Issues/Opportunities, and Implementation Issues/Opportunities. Each table will address techniques used with specific skills needed for implementation of a PPP. Industry and public individuals with experience in PPP projects will serve as "Expert Resources" throughout the discussions to facilitate open, candid discussions of the "best steps forward" for projects.

**2:30 PM            ROUNDTABLE HUDDLES**  
Tables for each discussion topic assemble to develop a consensus of their findings for presentation at 3:30 session.

**3:15 PM            BREAK**

**3:30 PM            ROUNDTABLE REPORTS**

**4:15 PM            CLOSING REMARKS**  
*Dick Braun (Founder, Center for Transportation Studies, University of Minnesota)*

**4:30 PM            ADJOURN**

<b>AUSTIN, TEXAS</b>	
<b>Date</b>	December 16, 2003
<b>Host</b>	<ul style="list-style-type: none"> <li>• Texas Department of Transportation</li> </ul>
<b>Location</b>	Doubletree Hotel
<b>Number and Type of Attendees</b>	<ul style="list-style-type: none"> <li>• Public: 112</li> <li>• Private: 32</li> </ul>
<b>State Context for PPP</b>	Texas has expansive new PPP legislation and a wide range of PPP toll road projects in various stages of development
<b>Workshop Structure</b>	<ul style="list-style-type: none"> <li>• Keynotes</li> <li>• Major speakers</li> <li>• Case study presentations</li> <li>• Participant roundtables</li> </ul>
<b>Speakers</b>	<ul style="list-style-type: none"> <li>• Judge Robert Hebert, Fort Bend County, Texas (NCPPT Chairman)</li> <li>• Rep. Michael Krusee, Transportation Committee, Texas House of Representatives</li> <li>• Rick Norment, NCPPT</li> <li>• Amadeo Saenz, Assistant Executive Director for Engineering and Operations, TXDOT</li> <li>• D.J. Gribbin, Chief Counsel, FHWA</li> <li>• Rep. Michael Burgess, R-Texas 26<sup>th</sup> District</li> </ul>
<b>Case Studies</b>	<ul style="list-style-type: none"> <li>• History of PPP projects: Shirley Ybarra, The Ybarra Group</li> <li>• PPP in the UK: Geoff Brown, Halcrow Group</li> <li>• Chicago Rail Improvement Plan as a railroad PPP: Paul Nowicki, BNSF</li> <li>• Private Equity Investments: Nick James, Macquarie Bank, Ltd.</li> <li>• Investment Bank role: Stephen Howard, Lehman Brothers</li> <li>• Combining economic development and transportation: Eric Keen, HDR</li> <li>• Debt Structure: William Streeter, Global Project Finance, Fitch Ratings</li> </ul>
<b>Key Discussion Points</b>	<ul style="list-style-type: none"> <li>• Texas program innovations offer a range of innovations including state matching funds, state conduct of environmental assessments and right-of-way, fixing prices early in the design phase, guarantee of completion date; single point of responsibility; assignment of project risk; life cycle cost efficiency; continuous constructability reviews; best value performance-based contracting, streamlined project administration; and enhanced cost control and risk management.</li> <li>• The role of multiple stakeholders in the PPP process needs to be recognized including those challenged and benefited</li> <li>• Communications and education of the public and stakeholders is needed early on, to familiarize them with projects and process and inform various stakeholders about potential roles</li> <li>• Tolls are not controversial among most stakeholders—legally or politically</li> <li>• Private sector participants emphasized the need to remove the restraints on transportation private activity bonds.</li> <li>• There is considerable potential in tapping project beneficiaries, developer impact fees and in-kind facilities to support project development</li> <li>• The front-end funding gap is a key deterrent to private investment, and needs to be addressed by streamlining permitting.</li> </ul>

## Partnerships in Transportation Workshop Austin, Texas

### PROGRAM AGENDA

- 7:30 AM**            **REGISTRATION AND CONTINENTAL BREAKFAST**
- 8:00 AM**            **WELCOMING REMARKS**  
*Judge Robert Hebert, Fort Bend County, Texas (NCPPT Chairman)*
- 8:15 AM**            **KEYNOTE ADDRESSES**  
*Michael Behrens, Executive Director, Texas Department of Transportation introduces State Representative Mike Krusee, Texas House of Representatives*
- 8:45 AM**            **FUNDAMENTALS AND ISSUES**  
PPPs are being used in a broad range of applications, but what are the keys to bringing the private sector to the table, especially for transportation projects?  
*Steven Simmons, Deputy Executive Director, Texas Dept. of Transportation introduces Richard Normant, Executive Director, National Council for Public-Private Partnerships*
- 9:15 AM**            **SETTING THE TONE FOR PUBLIC-PRIVATE PARTNERSHIPS**  
In the current fiscal environment, the USDOT is adopting a new approach to the development of transportation projects - that is now much more favorable to innovative approaches such as public-private partnerships. With a dialogue between Saenz and Gribbin about the shifting emphasis on options for development of projects.  
*Amadeo Saenz, Assistant Executive Director, Engineering Operations, TxDOT introduces D.J. Gribbin, Chief Counsel, Federal Highway Administration*
- 10:00 AM**           **REFRESHMENT BREAK**
- 10:15 AM**           **EXAMPLES OF PPPS: HOW OTHER STATES DID IT**  
Experienced practitioners discuss implementing PPPs in a number of states, revealing what works and what doesn't.  
*Moderator: Phillip Russell, Director, Texas Turnpike Authority Division, TxDOT*  
*Panelists: Geoff Brown, Director, Infrastructure Management, Halcrow Group Ltd.*  
*Nicholas James, Division Director, Macquarie Bank Ltd.*  
*Paul Nowicki, Assistant Vice President, Government & Public Policy, Burlington Northern Santa Fe Railway*  
*Shirley Ybarra, President, The Ybarra Group, Ltd.*
- 11:30 AM**           **QUESTIONS AND ANSWERS**
- NOON**                **LUNCHEON**  
A political leader discusses the legislative environment for PPPs and transportation projects.  
*Michael Behrens, Executive Director, Texas Department of Transportation introduces Congressman Michael Burgess, Texas 26th Congressional District*
- 1:30 PM**            **COMBINING PRIVATE EQUITY, ECONOMIC DEVELOPMENT & TRANSPORTATION**  
The panel will discuss some of the most innovative ways to structure projects and improve the financing options with the private sector.  
*Moderator: Cathy Williams, Assistant Executive Director, Support Operations, TxDOT*  
*Panelists: Eric Keen, President, HDR Construction Control Corporation*  
*Stephen Howard, Senior Vice President, Lehman Brothers*  
*William Streeter, Managing Director, Global Project Finance, Fitch Ratings*
- 2:30 PM**            **ROUNDTABLES - HOW TO APPLY THE CONCEPT OF PPPS**  
Discussion tables will tackle some of the problems and solutions to their current and proposed projects, with the assistance of "expert resources."
- 3:45 PM**            **BREAK/ROUNDTABLE HUDDLES**
- 4:15 PM**            **ROUNDTABLE REPORTS**  
*Moderator: Richard Normant, Executive Director, NCPPT*
- 5:00 PM**            **CLOSING REMARKS**  
*Richard Normant, Executive Director, NCPPT*
- 5:15 PM**            **ADJOURN**



<b>ORLANDO, FLORIDA</b>	
<b>Date</b>	October 6, 2004
<b>Host</b>	<ul style="list-style-type: none"> <li>Florida Department of Transportation</li> <li>Florida's Turnpike Enterprise</li> </ul>
<b>Location</b>	Florida's Turnpike Enterprise Headquarters
<b>Number and Type of Attendees</b>	<ul style="list-style-type: none"> <li>Public: 53</li> <li>Private: 65</li> </ul>
<b>State Context for PPP</b>	FDOT and its Florida's Turnpike Enterprise subsidiary have been at the leading edge of PPPs for a number of years, with several successful projects
<b>Workshop Structure</b>	<ul style="list-style-type: none"> <li>Keynotes, major speakers, panel discussion, case study presentations, participant roundtables</li> </ul>
<b>Speakers</b>	<ul style="list-style-type: none"> <li>Jim Ely, Florida's Turnpike Enterprise</li> <li>Earl Durden, Chairman, Florida Transportation Commission</li> <li>Jim Harrison, Orange County Government</li> <li>Richard Norment, National Council of Public-Private Partnerships</li> <li>Jose Abreu, Florida Department of Transportation</li> <li>Mary Peters, Federal Highway Administration</li> <li>Michael Jackson, AECOM Technology Corporation</li> <li>Lowell Clary, Florida Department of Transportation</li> <li>State Senator Daniel Webster, Florida Senate</li> </ul>
<b>Case Studies</b>	<ul style="list-style-type: none"> <li>Florida East Coast Railway experience: Heidi Eddins, FECI</li> <li>S.W. Fla. Transportation Initiative: David Graham, Bonita Bay Group</li> <li>Investment Bank role: Stephen Howard, Lehman Brothers</li> <li>Making equity equate: Sasha Page, Infrastructure Management Group</li> <li>Florida Turnpike Enterprise experience: Bill Thorpe, FTE</li> <li>Key elements for PPP success: Tom Ragland, CH2M Hill</li> <li>Lessons learned implementing PPPs: Rick Volk, Koch Performance Roads</li> <li>History of PPP projects: Shirley Ybarra, The Ybarra Group</li> </ul>
<b>Key Discussion Points</b>	<ul style="list-style-type: none"> <li>PPPs involve more than just tolling, and are not just highways—they can be rail, intermodal facilities, etc. Go where there is money available to find the best combination of private, local, state, and federal funds</li> <li>What is a PPP? Everyone is different—it can be any number of differing combinations of private and public participation. The answer for any particular project depends on who is interested and what they are willing to do to get involved. Sponsors should keep their options open</li> <li>How to get parties together with right level of understanding? There's a need for communication, understanding public interests, clear guidelines for how process works, and understanding of available tools</li> <li>How do you value each party's contribution? Assess each party's ability to access the market (to encourage public acceptance), as well as the value of any functional contributions, including right-of-way donation or eminent domain power, tax exempt financing abilities, underutilized assets, ability to manage environmental and/or procurement processes</li> <li>Transfer the appropriate risks to the public sector. The private sector could be destroyed by a tort liability case, while the public sector has a greater ability to manage some of these risks.</li> <li>Educate local entities about the needs for and potential benefits of PPPs. Discussions should be ongoing to avoid last-minute confrontation.</li> </ul>

## Partnerships in Transportation Workshop Orlando, Florida

### PROGRAM AGENDA

- 7:30 AM**      **REGISTRATION & CONTINENTAL BREAKFAST**
- 8:00 AM**      **WELCOMING REMARKS**  
*Jim Harrison, Orange County Government*  
*Earl Durden, Chairman, Florida Transportation Commission*
- 8:15 AM**      **FUNDAMENTALS AND ISSUES**  
PPPs are being used in a broad range of applications, but what are the keys to bringing the private sector to the table, especially for transportation projects?  
*José Abreu, P.E., Florida Department of Transportation introduces*  
*Richard B. Norment, National Council for Public-Private Partnerships*
- 8:45 AM**      **SETTING THE TONE FOR PUBLIC-PRIVATE PARTNERSHIPS**  
In the current fiscal environment, the USDOT is adopting a new approach to the development of transportation projects, including a much more favorable setting for innovative approaches such as public-private partnerships. This session includes a dialogue between state and federal officials about the shifting emphasis on options for development of projects.  
*Discussion Leader:      José Abreu, P.E., Florida Department of Transportation*  
*Panelists:                Lowell Clary, Florida Department of Transportation*  
*Michael P. Jackson, AECOM Technology Corporation*  
*Mary E. Peters, Federal Highway Administration*
- 10:15 AM**      **REFRESHMENT BREAK**
- 10:30 AM**      **COMBINING PRIVATE EQUITY, ECONOMIC DEVELOPMENT & TRANSPORTATION**  
The panel will discuss some of the most innovative ways to structure projects and improve the financing options with the private sector.  
*Moderator:              Daniel Dornan, P.E., AECOM Consult, Inc.*  
*Panelists:                Heidi J. Eddins, Florida Transportation Commission*  
*David H. Graham, Bonita Bay Group*  
*Stephen E. Howard, Lehman Brothers*  
*Sasha Page, Infrastructure Management Group*  
*William Thorp, Florida Turnpike Enterprise System*
- 11:30 AM**      **QUESTIONS & ANSWERS**
- NOON**          **LUNCHEON**  
A political leader discusses the legislative environment for PPPs and transportation projects.  
*The Honorable Daniel Webster, Florida Senate*
- 1:30 PM**      **EXAMPLES OF PPPS**  
Experienced practitioners discuss implementing PPPs in a number of states, revealing what works and what doesn't for state and local projects.  
*Moderator:              James L. Ely, Florida Department of Transportation*  
*Panelists:                Tom Ragland, CH2M HILL*  
*Rick Volk, Koch Performance Roads, Inc.*  
*Shirley J. Ybarra, The Ybarra Group, Ltd.*
- 2:45 PM**      **ROUNDTABLES - HOW TO APPLY THE CONCEPT OF PPPS**  
Discussion tables will tackle some of the problems and solutions to their current and proposed projects, with the assistance of expert resources. Each roundtable will focus on one of the following major themes: Getting Started; How to Structure the Deal; and How to Implement the Partnership.
- 3:45 PM**      **BREAK & ROUNDTABLE HUDDLES**
- 4:00 PM**      **ROUNDTABLE REPORTS**  
*Moderator:              Porter K. Wheeler, Ph.D., Infrastructure Management Group*
- 4:45 PM**      **CLOSING REMARKS**

<b>SACRAMENTO, CALIFORNIA</b>	
<b>Date</b>	October 20, 2004
<b>Host</b>	<ul style="list-style-type: none"> <li>California Department of Transportation</li> </ul>
<b>Location</b>	Hilton Sacramento Arden West Hotel
<b>Number and Type of Attendees</b>	<ul style="list-style-type: none"> <li>Public: 74</li> <li>Private: 37</li> </ul>
<b>State Context for PPP</b>	After an early attempt to pilot four design-build-finance-operate concessions, California's PPP program has seen little progress in the past decade
<b>Workshop Structure</b>	<ul style="list-style-type: none"> <li>Keynotes, major speakers, panel discussion, case study presentations, participant roundtables</li> </ul>
<b>Speakers</b>	<ul style="list-style-type: none"> <li>U.S. Rep. Dough Ose</li> <li>John Ferrera, Business Transportation, and Housing Agency</li> <li>Richard Norment, National Council of Public-Private Partnerships</li> <li>Jeff Brown, State Senate Office of Research</li> <li>Emil Frankel, U.S. Department of Transportation</li> <li>Michael Jackson, AECOM Technology Corporation</li> <li>Mark Pisano, Southern California Association of Governments</li> </ul>
<b>Case Studies</b>	<ul style="list-style-type: none"> <li>San Francisco Bay area partnerships: Therese McMillan, MTC</li> <li>Sector motivations: John Stainback, Stainback Public/Private Real Estate</li> <li>Investment Bank role: Stephen Howard, Lehman Brothers</li> <li>Trans-Texas Corridor: Edward Pensock, TxDOT</li> <li>91 Express Lanes: Ellen Burton, Orange County Transportation Auth.</li> <li>SR-125 experience: Charles Stoll, Caltrans</li> <li>Transportation funding in California: John Barna, Anrab Assoc.</li> <li>Reducing risk, increasing flexibility: Robert Poole, Reason Foundation</li> </ul>
<b>Key Discussion Points</b>	<ul style="list-style-type: none"> <li>Despite the findings of a recent Government Accountability Office report, PPPs are happening, including the Trans-Texas Corridor and projects in Virginia and other states;</li> <li>There is enormous interest in real-estate related PPPs;</li> <li>PPPs can be complex undertakings, "a jigsaw puzzle without a picture;"</li> <li>PPPs involve basing decisions on return on investment, balancing profit and risk;</li> <li>Building trust between parties is essential to PPP success;</li> <li>Quality projects that serve the public interest and involve the private sector are required for successful PPPs;</li> <li>There is more to transportation PPPs than tolling;</li> <li>Information sharing, and a shared roadmap for public and private partners is essential;</li> <li>Success is achieved through innovation, not always through imitation;</li> <li>If California (or any other state) does not lead in infrastructure development, other states will fill the void and capture the benefits of economic development.</li> <li>The fear of PPPs can be legitimate, but honesty and accountability are antidotes, addressed through openness and candor; and</li> <li>The private sector is still interested in PPPs in California.</li> </ul>

**Partnerships in Transportation Workshop  
Sacramento, California**

**PROGRAM AGENDA**

- 7:30 AM        REGISTRATION & CONTINENTAL BREAKFAST**
- 8:00 AM        WELCOMING REMARKS**  
*Cindy McKim, California Department of Transportation*
- 8:30 AM        KEYNOTE ADDRESSES**  
What challenges in transportation does California face and how can public-private partnerships provide part of the answer.  
U.S. Rep. Doug Ose, R-Sacramento  
*John D. Ferrera, Business, Transportation & Housing Agency*
- 8:15 AM        FUNDAMENTALS AND ISSUES**  
PPPs are being used in a broad range of applications, but what are the keys to bringing the private sector to the table, especially for transportation projects?  
*Richard B. Norment, National Council for Public-Private Partnerships*
- 9:30 AM        SETTING THE TONE FOR PUBLIC-PRIVATE PARTNERSHIPS**  
In the current fiscal environment, the USDOT is adopting a new approach to the development of transportation projects, including a much more favorable setting for innovative approaches such as public-private partnerships. This session includes a dialogue between state and federal officials about the shifting emphasis on options for development of projects.  
*Discussion Leader:        John D. Ferrera, Business, Transportation & Housing Agency*  
*Panelists:                Jeff Brown, Senate Office of Research*  
*Emil Frankel, U.S. Department of Transportation*  
*Michael P. Jackson, AECOM Technology Corporation*
- 10:45 AM       REFRESHMENT BREAK**
- 11:00 AM       COMBINING PRIVATE EQUITY, ECONOMIC DEVELOPMENT & TRANSPORTATION**  
The panel will discuss some of the most innovative ways to structure projects and improve the financing options with the private sector.  
*Moderator:        Geoffrey S. Yarema, Nossaman Guthner Knox & Elliott LLP*  
*Panelists:        Stephen E. Howard, Lehman Brothers*  
*Therese W. McMillan, Metropolitan Transportation Commission*  
*John Stainback, Stainback Public/Private Real Estate*
- NOON            LUNCHEON**  
A political leader discusses the legislative environment for PPPs and transportation projects.  
*Mark Pisano, Southern California Association of Governments*
- 1:30 PM        EXAMPLES OF PPPS**  
Experienced practitioners discuss implementing PPPs in a number of states, revealing what works and what doesn't for state and local projects.  
*Moderator:        Shirley J. Ybarra, The Ybarra Group, Ltd.*  
*Panelists:        John Barna, Anrab Associates*  
*Ellen S. Burton, Orange County Transportation Authority*  
*Edward Pensock, Texas Department of Transportation*  
*Robert Poole, Reason Foundation*  
*Charles Stoll, California Department of Transportation*
- 3:00 PM        DISCUSSION - HOW TO APPLY THE CONCEPT OF PPPS**  
Discussion tackles some of the problems and solutions to their current and proposed projects, focusing on lessons learned from the workshop, biggest constraints, and general as well as personal next steps  
*Moderator:        Porter K. Wheeler, Ph.D., Infrastructure Management Group*
- 4:00 PM        CLOSING REMARKS**

<b>DURHAM, NORTH CAROLINA</b>	
<b>Date</b>	December 15, 2004
<b>Host</b>	<ul style="list-style-type: none"> <li>North Carolina Department of Transportation</li> </ul>
<b>Location</b>	Sheraton Imperial Hotel & Convention Center
<b>Number and Type of Attendees</b>	<ul style="list-style-type: none"> <li>Public: 57</li> <li>Private: 41</li> </ul>
<b>State Context for PPP</b>	North Carolina's PPP experience is limited, but it recently created a Turnpike Authority to advance toll projects and awaits broader PPP enabling legislation
<b>Workshop Structure</b>	<ul style="list-style-type: none"> <li>Keynotes, major speakers, panel discussion, case study presentations, participant roundtables</li> </ul>
<b>Speakers</b>	<ul style="list-style-type: none"> <li>David King, North Carolina Department of Transportation</li> <li>Lyndo Tippet, North Carolina Department of Transportation</li> <li>Richard Norment, National Council for Public-Private Partnerships</li> <li>Grayson Kelley, North Carolina Department of Justice</li> <li>Jim Humphrey, Charlotte Department of Transportation</li> <li>Charles Nottingham, Federal Highway Administration</li> <li>Thomas Bradshaw, Citigroup Global Markets</li> <li>Rep. Nelson Cole, N.C. General Assembly</li> </ul>
<b>Case Studies</b>	<ul style="list-style-type: none"> <li>Bond guarantees: Sandra Brinkert, Ambac Assurance Corporation</li> <li>Investment Bank role: Stephen Howard, Lehman Brothers</li> <li>Research Triangle Park: Elizabeth Rooks, Research Triangle Foundation</li> <li>South Carolina PPP experience: John Sullivan, FHWA</li> <li>Reasons for PPP in N.C.: Calvin Leggett, NCDOT</li> <li>Overcoming legal obstacles: Brian Chase, Nossaman Infrastructure</li> <li>History of PPP projects: Daniel Dornan, AECOM Consult</li> <li>Florida's Turnpike Enterprise experience: Christopher Warren, FTE</li> </ul>
<b>Key Discussion Points</b>	<p><b>Key Issues</b> include:</p> <ul style="list-style-type: none"> <li>Lack of funding;</li> <li>Appreciating value of lost time, congestion, &amp; other non-pecuniary costs;</li> <li>Big projects;</li> <li>Defining PPPs in North Carolina;</li> <li>Determining the powers and abilities of the N.C. Turnpike Authority;</li> <li>Applying standards for NCDOT to the N.C. Turnpike Authority; and</li> <li>Ensuring certainty for private partners.</li> </ul> <p><b>Key Strategies and Actions</b> include:</p> <ul style="list-style-type: none"> <li>Designating a leadership team for PPPs, including a capable chief;</li> <li>Developing a communications strategy for PPPs for parties internal to NCDOT as well as external parties, including small contractors and labor;</li> <li>Defining the organizational structure of the N.C. Turnpike Authority;</li> <li>Finding the right projects for PPPs and beginning with early success;</li> <li>Maximizing the selection processes for solicited and unsolicited proposals;</li> <li>Establishing ground rules for the private sector to proceed;</li> <li>Building institutional knowledge of PPPs within NCDOT;</li> <li>Identifying opportunities to learn from other states;</li> <li>Ensuring the accuracy of initial price and timing of projects, which is crucial for market credibility; and</li> <li>Maintaining realism about the implementation process.</li> </ul>

## Partnerships in Transportation Workshop Durham, North Carolina

### PROGRAM AGENDA

- 7:30 AM      REGISTRATION & CONTINENTAL BREAKFAST**
- 8:00 AM      WELCOMING REMARKS**  
Why are public-private partnerships something to be considered? Comments set the tone for the full day's workshop.  
*David D. King, North Carolina Department of Transportation introduces*  
*Lyndo Tippett, North Carolina Department of Transportation*
- 8:15 AM      FUNDAMENTALS AND ISSUES**  
PPPs are being used in a broad range of applications, but what are the keys to bringing the private sector to the table, especially for transportation projects?  
*Richard B. Norment, National Council for Public-Private Partnerships*
- 8:45 AM      THE NORTH CAROLINA PERSPECTIVE**  
What are some of the legal issues and pit falls with public-private partnerships and what changes to the laws would help.  
*Grayson G. Kelley, North Carolina Department of Justice*
- 9:30 AM      REFRESHMENT BREAK**
- 9:45 AM      SETTING THE TONE FOR PUBLIC-PRIVATE PARTNERSHIPS**  
In the current fiscal environment, the USDOT is adopting a new approach to the development of transportation projects, including a much more favorable setting for innovative approaches such as public-private partnerships. This session includes a dialogue between state and federal officials about the shifting emphasis on options for development of projects.  
*Discussion Leader:      David D. King, North Carolina Department of Transportation*  
*Panelists:                Jim G. Humphrey, Charlotte Department of Transportation*  
*Charles D. Nottingham, Federal Highway Administration*
- 10:45 AM      COMBINING PRIVATE EQUITY, ECONOMIC DEVELOPMENT & TRANSPORTATION**  
The panel will discuss some of the most innovative ways to structure projects and improve the financing options with the private sector.  
*Moderator:             Daniel Dornan, P.E., AECOM Consult, Inc.*  
*Panelists:                Sandra Brinkert, Ambac Assurance Corporation*  
*Stephen E. Howard, Lehman Brothers*  
*Elizabeth H. Rooks, Research Triangle Foundation of North Carolina*  
*John F. Sullivan, Federal Highway Administration*
- 11:30 AM      KEYNOTE ADDRESS**  
What are the challenges in transportation and how can public-private partnerships provide part of the answer.  
*Calvin W. Leggett, P.E., North Carolina Department of Transportation introduces*  
*Thomas W. Bradshaw, Citigroup Global Markets, Inc.*
- NOON          LUNCHEON**  
A political leader will discuss the legislative environment for public-private partnerships and transportation projects.  
*Susan Coward, North Carolina Department of Transportation introduces*  
*Representative Nelson Cole, North Carolina State Legislature*
- 1:30 PM      EXAMPLES OF PPPS**  
Experienced practitioners discuss implementing PPPs in a number of states, revealing what works and what doesn't for state and local projects, including light rail and turnpikes, and how other states deal with unsolicited proposals.  
*Moderator:             Calvin W. Leggett, P.E., North Carolina Department of Transportation*  
*Panelists:                Brian F. Chase, Nossaman Guthner Knox & Elliott*  
*Christopher L. Warren, Florida's Turnpike Enterprise*  
*Daniel Dornan for Shirley J. Ybarra, The Ybarra Group, Ltd.*

- 2:45 PM      ROUNDTABLES - HOW TO APPLY THE CONCEPT OF PPPS**  
Discussion tables will tackle some of the problems and solutions to their current and proposed projects, with the assistance of expert resources from NCPPP's Transportation Institute. Each roundtable will focus on one of the following major themes: Getting Started, How to Structure the Partnership, and How to Implement the Partnership.
- 3:45 PM      BREAK & ROUNDTABLE HUDDLES**
- 4:00 PM      ROUNDTABLE REPORTS**
- 4:45 PM      CLOSING REMARKS**  
*David D. King, North Carolina Department of Transportation*

**APPENDIX B:**  
**RESOURCES FOR SPONSORS OF PPPs**



## RESOURCES FOR SPONSORS OF PPPs

The Federal Highway Administration has developed a number of resources for sponsors of public-private partnerships. These include a number of federal initiatives, Special Experimental Project 15 (SEP-15), and the FHWA PPP web page (<http://www.fhwa.dot.gov/ppp>). These resources are described below.

### FHWA INITIATIVES

In addition to the Partnerships in Transportation workshops, FHWA has a number of initiatives at present to promote public-private partnerships, the Intragency PPP Task Force, the PPP Report to Congress, several PPP research projects, and *Innovative Finance Quarterly*. Each of these initiatives is detailed below.

- The FHWA Intragency PPP Task Force was formed in October 2003 to explore how current and future PPPs will be treated under federal laws affecting highway projects. Task force initiatives include the creation of SEP-15 to encourage the use of PPPs on federal-aid highway transportation projects; a webpage for those interested in using PPPs to procure federal-aid construction projects; and a Report to Congress on the challenges to the formation of PPPs (detailed below).
- The FHWA Report to Congress on PPPs, issued in December 2004 by U.S. DOT, answers the questions posed by Congress and attempts to provide a resource document for states interested in using public-private partnerships as a method of procurement. The report identifies the impediments to the formation of large, capital-intensive highway and transportation projects involving PPPs. The report is divided into five major sections: history of PPPs in highways and transit, value of PPPs, impediments in current law, regulations and practice that discourage the formation of PPPs, recommendations from states, trade associations, private law firms, consultants, designers, and contractors to remove those impediments, and U.S. DOT legislative proposals to facilitate PPPs. The report also contains case studies on completed and current projects.

The value section is designed to help states considering public-private partnerships better understand the benefits of such an approach and some of the downsides. This report, however, is not designed to be a manual on how to use public-private partnerships as part of a state program. FHWA has not addressed the myriad issues concerning when public-private partnerships should be used and how they should be negotiated. The report focuses on the questions posed by the House Report language and provides the background necessary to provide context for the answers to those questions. The report will be a valuable resource for those interested in using PPPs as an alternative method to the traditional procurement process.

The report is on the web at <http://www.fhwa.dot.gov/ppp>.

- FHWA has several PPP research projects related to public-private partnerships underway or planned. In addition to the PPP workshops described above, research is underway to develop detailed case studies of current PPPs in the United States and abroad and to develop model legislation and contract documents that could be used as the basis for

establishing partnerships that meet the unique requirements of individual states and individual project. The case study project will:

- Develop a series of detailed case studies of domestic PPPs and project overviews of international PPPs that characterize PPPs according to an accepted typology, describe their institutional challenges and how those challenges were addressed, and identify general strategies to overcome various types of impediments that may confront other PPPs; and
- Synthesize and document the study finding in a guidebook for prospective participants in PPPs.

The model legislation research will:

- Compare and contrast state legislation pertaining to PPPs for highway programs and projects; and
- Compare and contrast partnership agreements and key legal documents to allow potential partners to more readily identify opportunities and options for handling various partnership issues.

Future research will build on results of ongoing research, input from the PPP workshops, and other outreach activities.

- *Innovative Finance Quarterly*, a newsletter published by FHWA, provides information on the latest developments in Federally-sponsored innovative finance programs, such as TIFIA, GARVEE Bonds, and SIB transactions. It also features descriptions of innovative projects and programs of interest launched by state transportation agencies around the country. The newsletter also tracks legislative changes. Copies of all issues of the Quarterly dating back to 1997 are available on the FHWA Innovative Finance website, together with copies of FHWA's earlier Innovative Finance Newsletter.

## **SEP-15**

At the Partnerships in Transportation workshop in Orlando, Florida on October 6, 2004, Federal Highway Administrator Mary Peters introduced Special Experimental Project 15 (SEP-15), a new experimental process for FHWA to identify, for trial evaluation, new public-private partnership approaches to project delivery. FHWA anticipates that these new approaches will allow the efficient delivery of transportation projects without impairing FHWA's ability to carry out its stewardship responsibilities to protect both the environment and American taxpayers.

SEP-15 addresses, but is not limited to, four major components of project delivery:

- Contracting;
- Compliance with environmental requirements;
- Right-of-way acquisition; and
- Project finance.

Elements of the transportation planning process may be also involved. SEP-15 applications may include suggested changes to the FHWA's traditional project approval procedures and may

require some modifications in the implementation of FHWA policy. Deviations from current title 23, U.S.C., requirements and generally applicable FHWA regulations also may be involved.

The goal of SEP-15 is to encourage tests and experiments in the entire project development process, specifically aimed at, but not limited to, promoting greater use of public-private partnerships and attracting private investment in transportation improvements. Objectives include:

- Identify for trial evaluation and documentation more cost-effective approaches to delivering Federal-aid transportation projects, pertaining to contracting, finance, right-of-way acquisition, environmental clearance, and transportation planning;
- Test and evaluate the application of innovative approaches to project development, financing, and delivery that would otherwise be impeded by existing rules and regulations of FHWA under the Federal-Aid Highway Program and existing statutes;
- Identify impediments in current laws, regulations, and practices to greater use of public-private partnerships and private investment in transportation improvements;
- Determine changes in current laws, regulations, and practices that would remove impediments to more cost-effective approaches to project development, financing, and delivery, while protecting the environment and public;
- Establish comprehensive policies and seek future legislation to eliminate those impediments to program delivery innovations that have proved most useful under SEP-15;
- Identify changes in current practices that could promote greater and more effective private sector involvement in the delivery of Federal-aid construction projects; and
- Enable and encourage state transportation agencies to apply innovative approaches to project development, finance, and delivery that result in more timely and cost-effective projects.

Intended outcomes are greater use of public-private partnerships and private investment in federal-aid transportation improvements through innovations in project planning, development, finance, design, construction, maintenance and operations, as well as increased project management flexibility, improved efficiency, timely project implementation, enhanced quality, and new revenue streams while protecting the environment, taxpayers, and investors.

While SEP-15 will allow greater flexibility in gaining exemption to existing regulations and procedures that restrict the use of more innovative project delivery approaches, it will do so on a selective basis. Projects designated under the SEP-15 program must be approved by FHWA, based upon a formal application processed through the local division office and authorized by FHWA headquarters staff. Upon completion, SEP-15 project milestones, the public-private sponsors will be required to submit an independently-prepared evaluation report on project results, lessons learned, and impacts on the project, and recommended changes in statutes or regulations that impede the application of innovations used in the project. In developing and delivering SEP-15 projects, sponsors will be expected to ensure the provision of appropriate

engineering standards, environmental protections, effective competition among service providers, and prudent internal controls that protect against waste, fraud, and abuse.

In her remarks in Orlando, Peters said that supporting innovation is central to FHWA's mission, and that the agency wants to partner with and encourage states interested in experimenting with better ways to provide mobility.

"We have evaluated a variety of innovative contracting practices under Special Experimental Project No.14 (SEP-14), several of which have become a regular part of the highway program, including design-build and cost-plus-time bidding," said Peters. "FHWA has also long-encouraged innovations in the area of transportation financing, including TIFIA. It is time, however, for us to take the next step in encouraging innovation and develop a program that provides incentives for innovation in all aspects of project development.

Peters continued, "Announcing this new program at this conference is appropriate because SEP-15 will encourage the formation of PPPs by providing additional flexibility for states interested in experimenting with better ways to develop projects. SEP-15 will lead to increased project management flexibility, more innovation, improved efficiency, timely project implementation, and new revenue streams.

"SEP-15 arose out of some of the questions we received from states interested in pursuing large, corridor projects—in particular I-81 in Virginia and I-35 in Texas," said Peters. "These projects did not fit well under SEP-14. SEP-14 allows for innovations in contracting, but is not designed to provide flexibility in the environmental review process, project finance, or in areas such as right-of-way acquisition. As the projects in Virginia and Texas underscored, we needed a special experimental project that would allow innovative project proponents to ask for flexibility on a project-wide basis."

According to Peters, SEP-15 provides project-wide flexibility, and will improve the agency's climate towards PPPs and other projects advanced through innovative project delivery mechanisms.

## **FHWA PPP WEBPAGE**

The FHWA Public-Private Partnership (PPP) Webpage was developed as part of the project in response to FHWA's growing need to disseminating information on new PPPs to the widest possible audience. The webpage was prepared by PB Consult as a subcontractor to AECOM Consult, and is now available from the FHWA homepage at: <http://www.fhwa.dot.gov/ppp>.

The site was launched in January 2005, shortly before the Transportation Research Board Annual Meeting in Washington, D.C.

The site has a number of purposes:

- To provide information of all types on PPPs;
- To provide a convenient architecture that allows users to navigate to information of all types germane to PPP

- To allow FHWA to readily post additional resources to the site as they become available; and
- To provide concise definitions and an overall framework for understanding the range of PPP applications.

While the webpage makes a broad range of pre-existing information available to users through links and by posting files directly, the text content of the site itself is all new and is the result of considerable research conducted by PB Consult, with input from the National Council for Public-Private Partnerships (NCPPP), and careful review by FHWA staff. This research broadens and enhances the body of literature that FHWA has compiled on PPPs in the past, including the recent FHWA PPP Report To Congress.

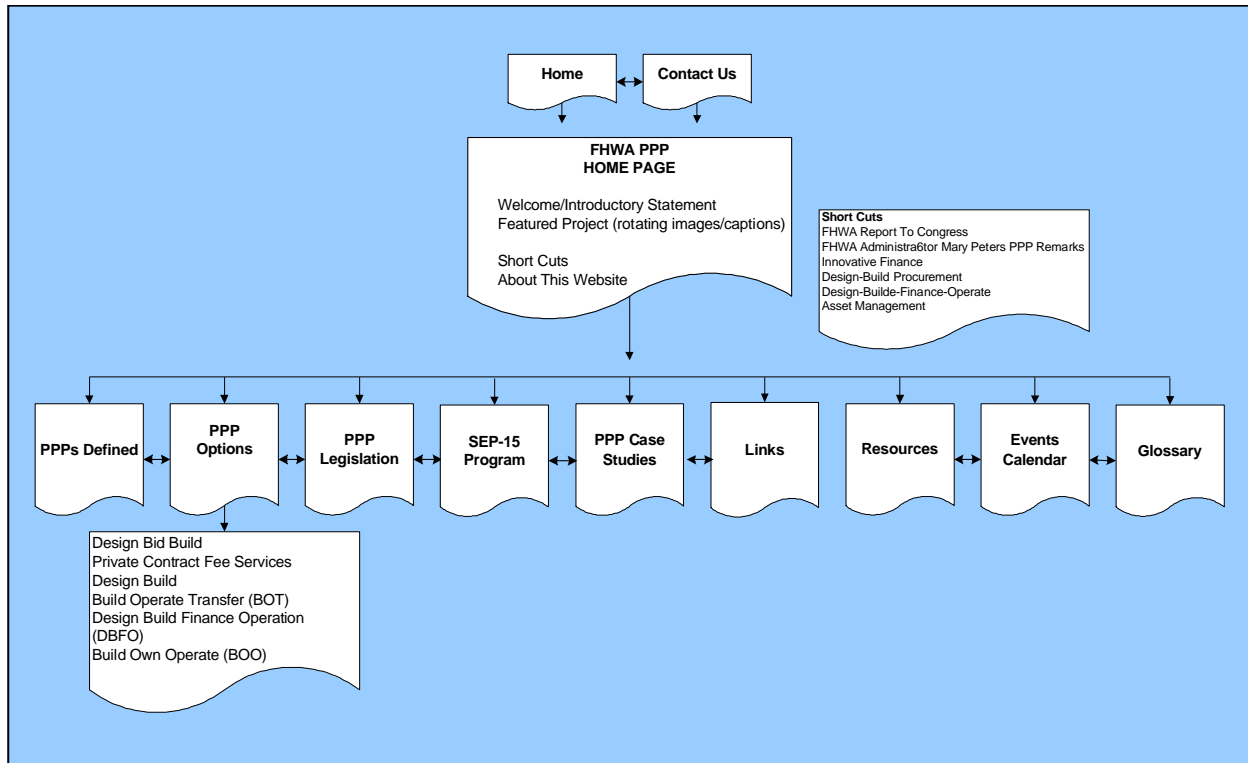
The FHWA PPP webpage includes a number of sections, listed below and shown in the site map for the webpage in Figure 3 on the next page.

- A question-and-answer section that defines PPPs, key benefits, risks, and other aspects of PPPs;
- An overview of the various PPP options, including
  - Design-bid-build;
  - Private contract fee services;
  - Design-build;
  - Build-operate-transfer;
  - Design-build-finance-operate; and
  - Build-own-operate;
- A state-by-state list of PPP enabling legislation, including links to actual statutes;
- A summary of the SEP-15 program;
- Over 20 domestic and international case studies;
- Links to other PPP-related webpages;
- An extensive list and description of various PPP-related resources;
- A PPP events calendar; and
- A glossary of PPP terms and definitions.

Each of these sections is described more fully below.

The PPP webpage includes a comprehensive set of frequently asked questions (FAQs) that provides in depth responses to a number of questions on PPPs. These range from definitions to discussions of the benefits and risks and rewards commonly associated with PPPs. The FAQs also explore financing, procurement and regulatory issues, among others. Together the FAQs are intended to provide transportation professions with an understanding of the issues involved with PPPs and the various steps involved with implementing a successful PPP project.

**FIGURE 3. SITE MAP OF FHWA PUBLIC-PRIVATE PARTNERSHIP (PPP) WEBPAGE**



The PPP Options section identifies and defines the common PPP structures and shows the ways in which private sector responsibilities can be expanded through the use of partnerships. This section of the site depicts the different PPP options expanding across a spectrum of increased private responsibilities. These options range from transferring tasks normally done in house to the private sector, to combining typically separate services into a single procurement or having private sector partners assume owner-like roles. The specific PPP Options defined include the following:

- Design-Bid-Build
- Private Contract Fee Services
  - Operations and Maintenance
  - Program Management
- Design-Build
- Build-Operate-Transfer (BOT)
- Design-Build Finance Operate (DBFO)
  - Real Toll Concessions
  - Shadow Toll Concessions
- Build-Own-Operate (BOO)

Among the site's most important features are profiles of recent projects that have benefited from one or more types of PPPs. The profiles are organized by the PPP options listed above. In cases where projects have been procured using a combination of approaches, such as design-build and design-bid-build, they are listed under both categories. The profiles have been reviewed by their sponsoring agencies and are presented in a tabular format to facilitate comparisons. Photographs of each of the projects are included in a rotating photo gallery in the center of the home page, together with brief summaries and onward links to the full profile description. The featured image changes each time the home page is refreshed.

The PPP webpage also provides brief summaries and onward links to the PPP legislation enacted in 23 U.S. states to enable the use of PPPs in the development of transportation infrastructure. This information is presented in an easy to use tabular form. The site also includes information and onward links on the SEP-15 Program. This is FHWA's new experimental process to identify, for trial evaluation, new public-private partnership approaches to project delivery. Additional materials on the SEP-15 will be made available from this section of the webpage as the program matures.

In addition to these features, the site also includes annotated links to other websites that address issues related to PPPs. The "Resources" section provides summaries of and onward links to other resource documents on PPPs. An Events Calendar provides overviews of upcoming conferences, seminars and professional meetings that treat PPPs both in the United States and abroad. The site also includes a glossary providing definitions of over 153 technical terms which are germane to PPPs.

The PPP webpage also highlights a number of important resources with short cut links available from the homepage. Shortcut links are provided for the FHWA PPP Report to Congress, as well as recent remarks made on the use of PPPs by FHWA Administrator Mary Peters. Other links are provided to the FHWA Design-Build and Asset Management websites, together with an onward link to the InnovativeFinance.org website, which is maintained by the American Association of State Highway and Transportation Officials (AASHTO), together with support from FHWA.